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Act.

Minutes of proceedings and evidence.
Nos. 1 and 2.

Chairman: G.W. Baldwin, Esq.

House of Commons. 4th Session.
24th Parliament. 1960-61.



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HOUSE OF COMMONS
Fourth Session—Twenty-fourth Parliament
1960-61

SPECIAL COMMITTEE ON
THE WAR MEASURES ACT

Chairman: G. W. BALDWIN, Esq.

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 1

TUESDAY, JUNE 20, 1961
MONDAY, JUNE 26, 1961

THE WAR MEASURES ACT

WITNESSES:

The Honourable E. D. Fulton, Minister of Justice and Attorney General;
Mr. E. A. Driedger, Deputy Minister; Mr. R. B. Bryce, Clerk of the
Privy Council and Secretary to the Cabinet; Mr. C. W. Harvison,
Commissioner, Royal Canadian Mounted Police.



SPECIAL COMMITTEE ON THE WAR MEASURES ACT

Chairman: G. W. Baldwin, Esq.,

Vice-Chairman: A. DeB. McPhillips, Esq.,

and Messrs.

Aiken
Deschatelets
Fortin
Kucherepa
LaMarsh (Miss)

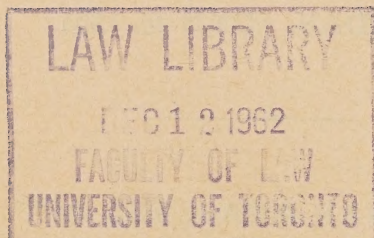
Mandziuk
Martin (*Essex East*)
Matheson
Paul
Pitman

Roberge
Spencer
Stewart

(Quorum—8)

R. L. Boivin,
Clerk of the Committee.

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ORDERS OF REFERENCE

House of Commons,
TUESDAY, June 13, 1961.

Resolved,—That a Special Committee be appointed to consider and recommend changes that may be desirable in the War Measures Act;

That the Committee consist of fifteen Members to be designated by the House;

That the Committee be empowered to sit during the sittings of the House;

That the Committee have power to send for persons and papers;

That the Committee have power to print such papers and evidence from day to day as it may deem advisable and that Standing Order 66 be suspended in relation to the printing thereof; and

That the Committee be empowered to report from time to time.

House of Commons,
FRIDAY, June 16, 1961.

Ordered,—That the Special Committee on the War Measures Act, appointed Tuesday, June 13, 1961, be composed of Miss LaMarsh, and Messrs. Aiken, Baldwin, Deschatelets, Fortin, Kucherepa, Mandziuk, Martin (*Essex East*), Matheson, McPhillips, Paul, Pitman, Roberge, Spencer, and Stewart.

Attest.

LÉON-J. RAYMOND,
Clerk of the House.

MINUTES OF PROCEEDINGS

TUESDAY, June 20, 1961.

(1)

The Special Committee on the War Measures Act met this day at 1.00 o'clock p.m. for the purpose of organization.

Members present: Miss LaMarsh and Messrs. Aiken, Baldwin, Deschatelets, Fortin, Kucherepa, Mandziuk, Martin (*Essex East*), Matheson, McPhillips, Paul, Roberge, Spencer, Stewart.—(14).

Moved by Mr. Kucherepa, seconded by Mr. Spencer,

That Mr. Baldwin do take the Chair of this Committee as Chairman.

Moved by Mr. Stewart, seconded by Mr. Martin,

That Mr. Spencer do take the Chair of this Committee as Chairman.

Mr. Spencer thanked the Members who had nominated him for the office of Chairman, but requested and obtained leave from the Committee to withdraw his nomination.

Thereupon, on motion of Mr. Martin, seconded by Mr. Stewart, nominations were closed.

Mr. Kucherepa's motion was then agreed to unanimously, and Mr. Baldwin was declared duly elected Chairman of the Committee. He took the Chair and thanked the Committee for the honour conferred upon him.

The Committee proceeded on to its routine business.

On motion of Mr. Fortin, seconded by Mr. Paul,

Resolved,—That Mr. McPhillips be Vice-Chairman of this Committee.

On motion of Mr. Fortin, seconded by Mr. Stewart,

Resolved,—That, pursuant to its Order of Reference dated June 13, 1961, the Committee print 750 copies in English and 250 copies in French of its Minutes of Proceedings and Evidence.

On motion of Mr. Aiken, seconded by Mr. Fortin,

Resolved,—That a Subcommittee on Agenda and Procedure comprising the Chairman and six Members to be named by him be appointed.

The Chairman suggested that the Committee entrust to the Subcommittee on Agenda and Procedure the task of preparing the order of business and report to the Committee at its next meeting. The Committee adopted the Chairman's suggestion.

At 1.20 o'clock p.m. the Committee adjourned to the call of the Chair.

MONDAY, June 26, 1961.

(2)

The Special Committee on the War Measures Act met this day at 10.20 o'clock a.m. The Chairman, Mr. G. W. Baldwin, presided.

Members present: Miss LaMarsh, and Messrs. Aiken, Baldwin, Deschatelets, Kucherepa, Martin (*Essex-East*), Matheson, McPhillips, Paul, Pitman, Roberge. (11).

In attendance: The Honourable E. D. Fulton, Minister of Justice and Attorney General; Mr. E. A. Driedger, Deputy Minister; Mr. R. B. Bryce, Clerk

of the Privy Council and Secretary to the Cabinet; Mr. C. W. Harvison, Commissioner, Royal Canadian Mounted Police.

The Chairman announced to the Committee the names of members appointed by him to the Subcommittee on Agenda and Procedure, as follows: Miss LaMarsh, and Messrs. Deschatelets, McPhillips, Paul, Pitman and Stewart.

The Chairman then read the Report of the Subcommittee, and the Committee agreed to defer until Wednesday's meeting choosing its hours of sitting. The Report was adopted on motion of Mr. Deschatelets, seconded by Mr. Paul.

The Chairman then welcomed the Minister of Justice and the officials from the Department of Justice, the Privy Council and the Royal Canadian Mounted Police.

The Minister then made a brief statement on the War Measures Act as amended by the Bill of Rights and on the advisability of further amending the War Measures Act. The Minister announced that he had prepared in this respect a draft Bill which was available for distribution to the Members of the Committee.

On motion of Mr. Roberge, seconded by Mr. Aiken,

Resolved,—That the War Measures Act and the Bill of Rights be included in today's Minutes of Proceedings and Evidence as *Appendix "A" and Appendix "B"*. (Copies distributed to the Members).

The Committee agreed to have distributed to its members copies of the Minister's draft Bill amending the War Measures Act.

The Minister was further questioned on his statement.

At 11.00 o'clock the Committee adjourned until 2.30 o'clock p.m. this day.

AFTERNOON SITTING

(3)

The Committee reconvened at 2.40 o'clock p.m. The Chairman, Mr. G. W. Baldwin, presided.

Members present: Miss LaMarsh, and Messrs Aiken, Baldwin, Deschatelets, Kucherepa, Mandziuk, McPhillips, Paul, Roberge.—(9).

In attendance: The Honourable E. D. Fulton, Minister of Justice and Attorney General; Mr. E. A. Driedger, Deputy Minister; Mr. R. B. Bryce, Clerk of the Privy Council and Secretary to the Cabinet.

The Chairman had distributed to the Members the draft Bill amending the War Measures Act, prepared by the Minister of Justice.

The Chairman then invited Mr. Driedger to explain to the Committee the purpose of the Bill. The witness made a statement on the War Measures Act and its proposed amendments.

The Minister and the Deputy Minister were questioned at length on the Draft Bill.

The Committee agreed to amend the motion presented at this morning's sitting by Mr. Roberge with respect to the printing of the War Measures Act and the Bill of Rights, in order to print a consolidation of both Acts, as well as the Regulations laid down under the Bill of Rights, as Appendices to today's Minutes of Proceedings and Evidence. (*See Appendix "A" and Appendix "B"*).

The Committee agreed to hear as a witness at its next meeting, Mr. R. B. Bryce, Clerk of the Privy Council.

At 3.55 o'clock p.m. the Committee adjourned until 2.30 o'clock p.m. Wednesday, June 28th, 1961.

R. L. Boivin,
Clerk of the Committee.

EVIDENCE

MONDAY, June 26, 1961.

The CHAIRMAN: Miss LaMarsh and gentlemen, I see a quorum. May I begin by announcing to the committee the names of the members whom I have appointed to the subcommittee on agenda and procedure. They are Miss LaMarsh and Messrs. Deschatelets, McPhillips, Paul, Pitman and Stewart. The committee also, of course, includes myself.

Your subcommittee met last Friday and agreed to present to the committee the following report:

Report to the Committee

Your subcommittee met on Friday, June 23, 1961, and agreed to call a meeting of the committee on Monday, June 26, at 10 o'clock a.m. to consider the future course of the committee and to hear the first witnesses, the Honourable D. Fulton, Minister of Justice, Mr. E. A. Driedger, Deputy Minister, and Mr. C. W. Harvison, Commissioner of the Royal Canadian Mounted Police.

Your subcommittee recommends that the committee hold its future meetings on Mondays at 9.30 a.m. and 2.30 p.m. and on Wednesdays at 2.30 p.m. The subcommittee felt that the committee would prefer to choose itself the most convenient times for its sittings on Thursdays or Fridays.

I should like to know if we should take suggestions now in regard to future meetings, or if we should wait until the meeting on Wednesday to decide how far we have gone and what lies ahead, and what time lies ahead.

Some hon. MEMBERS: Agreed.

Miss LAMARSH: Unless you have information which no one else has, about the duration of the session.

The CHAIRMAN: I have no information.

Miss LAMARSH: Then it would be a question of the blind leading the blind.

The CHAIRMAN: I am guessing, like everyone else.

Mr. AIKEN: I presume we are going to hear the minister and I wonder if you have any idea how long it will take for the minister's presentation and that of Mr. Driedger?

The Hon. E. D. FULTON (*Minister of Justice*): I do not think I will take more than ten minutes and Mr. Driedger's statement will take between 15 and 20 minutes.

Mr. AIKEN: Then I assume that following each presentation we will ask questions. Is that so?

The CHAIRMAN: I assume we will follow the usual course to that extent. By the way, I should say, also, that I am advised by the minister that Mr. Bryce is here and I am sure, with the degree of informality which will attach to a meeting of this kind, that from time to time, when the meeting has progressed, we might well feel there are others who should be called upon, who are here.

Before calling on the minister, might I have a motion for the adoption of the report of the subcommittee.

Mr. DESCHATELETS: I move that the report of the subcommittee be adopted.

Mr. PAUL: I second that.

Motion agreed to.

The CHAIRMAN: We are very pleased to have here the Hon. Mr. Fulton, who has given some consideration to this problem. This is a matter which we all approach in a spirit of interest and non-partisanship. We hope that we will at least have an opportunity, before any adjournment which may occur, to have the problem outlined to us so that we may know what we may have to do and what we may have to consider. With that in mind, I now ask Mr. Fulton if he would be good enough to make his statement to the committee.

Mr. FULTON: Thank you, Mr. Chairman and members of the committee. This committee meets as a result, of course, of a decision of the House of Commons which arose, I think, out of a suggestion made by the Prime Minister last session, that the house might form a special committee to consider what amendments it would be appropriate to make to the War Measures Act in the light and spirit of the Bill of Rights. We, in the Department of Justice, have been giving consideration to this problem ever since we began the work of drafting the Bill of Rights. We have been giving consideration to it particularly since the concrete suggestion made by the Prime Minister at the last session during the course of the debate on the Bill of Rights.

In the course of our consideration of the Bill of Rights itself, we came to the conclusion that one change in the War Measures Act should be made at the same time that the Bill of Rights was enacted, because the need for this was in a sense so obvious.

It was our general view that changes in the War Measures Act should not be dealt with specifically until the Bill of Rights was in effect, because we felt, and I think in general parliament agreed with us, that there should not be a discussion of the two measures mixed up in one debate, and that it would be more helpful and probably productive of better results to deal with the Bill of Rights first and the War Measures Act subsequently.

However, as I indicated a moment ago, we did feel there was one amendment to the War Measures Act which was so obvious and necessary, that it was appropriate to be enacted at the time of the enactment of the Bill of Rights itself. The reason behind that thinking is this, that the War Measures Act—and here I am but stating the obvious, though it may be helpful to put the matter in its context—is an act which confers upon the governor in council powers to do by order in council virtually anything that would normally require a specific legislative enactment.

Since the Bill of Rights, then, was a measure designed to protect by force of a statute,—under the aegis, as it were, of a statute,—the rights and freedoms which attach to the individual in Canada, it seemed that it was necessary at least to provide that no government could, under the guise of a manufactured or unreal emergency, bring the War Measures Act into effect and thus put the governor in council in a position where he could take away the rights and freedoms which the Bill of Rights was designed to protect. We felt, therefore, that it was essential that at the same time that the Bill of Rights was enacted there should be a provision amending the War Measures Act to ensure that parliament would have the right to review the bringing of the War Measures Act into effect, so that parliament itself, then, could pass upon the question whether the emergency relied upon by the government to bring the War Measures Act into effect was a valid and proper assumption,—whether such an emergency, in fact, existed.

Therefore, we made an amendment to section 6 of the War Measures Act, which I would like to read to you so that you can have the matter in its full context.

Section 6 of the War Measures Act, as previously in force, read as follows:

The provisions of the three sections last preceding shall only be in force during war, invasion, or insurrection, real or apprehended.

The three sections referred to were sections 3, 4 and 5 of the War Measures Act, which are the sections conferring these sweeping powers on the governor in council.

I am not going to read them in full, but I will simply refer to them in general.

Section 3 provides that the governor in council may do and authorize such acts and things, and make from time to time such orders and regulations, as he may by reason of the existence of real or apprehended war, invasion or insurrection deem necessary or advisable for the security, defence, peace, order and welfare of Canada. It goes on to provide that some of the specific matters with which the governor in council could deal on his own are censorship and the control and suppression of publications, et cetera; arrest, detention, exclusion and deportation; trading, exportation, importation, production and manufacture.

Section 3 also provides, in subsection (2), that all orders and regulations made under the section have the force of law. Then section 4 gives the governor in council the power to prescribe the penalties for violation of the orders and regulations made. Section 5 provides that no person held for deportation under the provisions of the War Measures Act shall be released upon bail without the consent of the Minister of Justice.

It will be seen, therefore, that these are enormously sweeping powers given to the governor in council.

Section 6 then said that the provisions of these three sections should only be in force during war, invasion or insurrection, real or apprehended.

This must be read in the light of section 2 of the War Measures Act, which says that the issue of a proclamation by Her Majesty, or under the authority of the governor in council, shall be conclusive evidence that war, invasion or insurrection, real or apprehended, exists.

Taking the whole act together, it will be seen that by its very scheme, the issue of a proclamation by the governor in council is conclusive evidence of the existence of the circumstances bringing into force the tremendous powers which the act itself confers upon him.

That is the reason why we thought it essential that the War Measures Act should be amended to give parliament the right to pass upon the propriety, the validity, the bona fides, if you like, of the proclamation.

Accordingly, in the Bill of Rights itself, we incorporated this provision, in section 6:

6. Section 6 of the War Measures Act is repealed and the following substituted therefor:

6. (1) Sections 3, 4 and 5 shall come into force only upon the issue of a proclamation of the governor in council declaring that war, invasion or insurrection, real or apprehended, exists.

You will appreciate, then, that this makes it necessary for the governor in council to determine whether or not this state of emergency exists, and then to make the necessary proclamation. Then it goes on:

(2) A proclamation declaring that war, invasion or insurrection, real or apprehended, exists shall be laid before parliament forthwith after its issue, or, if parliament is then not sitting, within the first fifteen days next thereafter that parliament is sitting.

(3) Where a proclamation has been laid before parliament pursuant to subsection (2), a notice of motion in either house signed by ten members thereof and made in accordance with the rules of that house within ten days of the day of the proclamation was laid before parlia-

ment, praying that the proclamation be revoked, shall be debated in that house at the first convenient opportunity within the four sitting days next after the day the motion in that house was made.

This has the effect that the government cannot delay the opportunity of parliament to debate the propriety of the proclamation, if parliament wishes to bring it into question.

In sub-section (4) the amendment provided that if both houses of parliament resolved that the proclamation be revoked, it would cease to have effect; then sections 3, 4 and 5 of the War Measures Act would cease to be in force unless those sections were again brought into force by a further proclamation. It will be seen that parliament now has the complete right to review the question whether or not the government was acting in good faith in making the proclamation under the War Measures Act—in short, whether or not there exists such an emergency as to justify the proclamation being made and the emergency powers being conferred upon the governor in council.

Miss LAMARSH: Has that already been passed into legislation?

Mr. FULTON: Yes. That was passed last year at the time the Bill of Rights was passed. It is a provision in the Bill of Rights, so that provision is in force.

Having provided, then, that it is not possible for any government acting in bad faith to take away the protections of the Bill of Rights by the issue of a proclamation under the War Measures Act, we felt that the next stage could be left until an appropriate time when parliament might find it convenient to consider—I will not say at leisure exactly, but deliberately—the steps which should be taken to amend the War Measures Act itself. That is the exercise upon which we have now embarked.

I would like to refer the committee to the suggestion made by the Prime Minister at the conclusion of the debate on the Bill of Rights. During the course of that debate, concern was expressed over the question whether the War Measures Act was in keeping with the spirit as well as the letter of the Bill of Rights. The Prime Minister's speech is reported at pages 7505-8 of *Hansard* of last session, and it concluded with the following statement:

I believe that if the house is agreeable we should at the next session set up a special committee representative of all parts of the house, not on a party basis whatever, for the purpose of giving the fullest consideration to this whole question of maintaining security while at the same time assuring a maximum of freedom for the rights of the individual.

The Leader of the Opposition also made a statement regarding the desirability of considering and revising the War Measures Act. His statement will be found in *Hansard* of July 4, 1960, pages 5651-5652.

In the Department of Justice we have been working since that time to consider what changes should be made to bring the War Measures Act into greater conformity with the spirit of the Bill of Rights. We have prepared a bill which is available, Mr. Chairman, for the consideration of this committee at any time that the committee wishes to have it.

In our consideration we tried to reconcile two propositions which are quite difficult to reconcile; and I am sure the committee will find the same difficulty in its task. First, there is the principle, which I have not yet heard questioned anywhere, that in times of emergency, such as a war, and particularly an emergency which would be represented by an atomic or nuclear war, it is necessary that the executive have powers, which it is not appropriate that it have in times of peace, to deal with that emergency and carry out its responsibility for the over-all safety and security of the nation. On the other hand, there is the immutable principle of the desirability of preserving and promoting the rights

and liberties of the individual, and there is the very difficult question of the extent to which one is entitled, even in times of war, to take powers which are a limitation upon the rights of the individual—which is the essence of the very system which we go to war to protect. It is a difficult philosophical as well as a legal problem, to find the point of reconciliation between the two desiderata.

We have, however, in our view, been able to produce two or three concrete and meaningful changes in the War Measures Act which we believe will represent a substantial reconciliation between those two points of view, and a substantial degree of protection of the rights of the individual, but which do not go so far as to make it impossible for the executive to discharge its responsibility of acting in the interest of the over-all welfare of the state in times of emergency. Those suggestions are incorporated in the bill, which, as I have said, is available for the committee.

In presenting this bill we have done so in the belief that the committee will find it probably more convenient and more helpful that we should come forward with a specific bill, with a draft in the form of a specific legislative enactment, rather than that we should confine our remarks to discussing general principles and generalities. Therefore, the document which is available, if the committee wishes it, is in the form of a draft bill. It is produced merely for the assistance of the committee if the committee considers it would be helpful.

I wonder if I could make some suggestions as to the method of procedure that I hope will assist the committee in dealing with its task. As I have said, the deputy minister of justice, Mr. Driedger, can make a statement with respect to the draft bill, its background and effects, if you so desire. The draft bill is ready, is in the hands of the law clerk of the house, and is available for distribution at any time the committee might desire it.

In addition, as you yourself, Mr. Chairman, remarked a few moments ago, Mr. Bryce, the clerk of the privy council, is here. Mr. Bryce will be prepared to give to the committee a general outline of emergency planning which is now going forward—I do not mean the physical aspects of the emergency planning, but the thinking and preparation the government is doing now so that, in the event of an outbreak of war, there would be the necessary legislative framework ready to be brought into operation at a moment's notice to enable the government to carry on with such emergency powers as are necessary on the outbreak of war.

Mr. Bryce could give evidence today, but he indicated to me that he would be in a better position to make a comprehensive statement if he could have another twenty-four hours to prepare himself.

Mr. MARTIN (*Essex East*): May I ask a question? Is what Mr. Bryce will say related to what you propose to put forward for our study and consideration?

Mr. FULTON: It will help explain the background of the bill, Mr. Martin. The bill, which we have drafted and have ready, is really a bill more to reconcile those two problems that I was describing—the protection of the rights of individuals on the one hand, but on the other hand, not to the point where there is an undue limitation placed on the powers of the government which it must have in wartime. Mr. Bryce's remarks would be more by way of background information as to the nature and extent of emergency powers which would be necessary and used in time of war.

Mr. MARTIN (*Essex East*): Is it your proposal that this bill would be sent to outside persons for consideration, or are we going to try to deal with it at this portion of our session?

Mr. FULTON: I had thought that, subject of course to the committee's decision, if the bill were distributed and its background and effects discussed here, then the committee might well wish to distribute the bill to interested

members of the public and obtain their reactions and comments, which might coincide with the period of adjournment of the session. We could then meet again, having the transcript of evidence to date available which would have been distributed to the public. The bill would also have been distributed, and then the comments would be available when the committee met again.

The CHAIRMAN: In that regard, Mr. Fulton, would it be your view that you would introduce this bill during the course of your statement, or would you prefer Mr. Driedger to do that?

Mr. FULTON: Mr. Driedger could speak to that later.

Mr. DESCHATELETS: Since we are in possession of the War Measures Act, could the minister give us the history and the background of this act, when it was enacted and if there were amendments to it?

Mr. FULTON: It was enacted in 1914.

Mr. DESCHATELETS: Have there been any amendments to it?

Mr. FULTON: I understand there were none until the amendment of last year by clause 6 of the Canadian Bill of Rights.

Mr. ROBERGE: I see that under Part II, subsection (2), there is a reference to orders and regulations passed under the War Measures Act. I would think that it would be a good thing to have the last set of orders issued under that act. At the same time, section 3 of the Bill of Rights refers to the regulations issued under the Bill of Rights. It might be a good thing to have them made available to the committee. Furthermore, I would suggest that the bill introduced by Mr. Martin in the house be made part of the record, so that we can discuss that when the time comes to do so.

The CHAIRMAN: Mr. Roberge, you were not at the first meeting, but Mr. Martin brought up the question of his bill and asked if it could be distributed and dealt with as related to this matter.

Mr. ROBERGE: But I wonder if it could not be made part of the record, as an appendix to the proceedings.

Mr. AIKEN: It is in the records of the house.

The CHAIRMAN: It is in the possession of the house. As a matter of fact, before we conclude the meeting, I am told by the clerk that the Bill of Rights and the War Measures Act are in short supply, and I will ask for a motion that those might be printed as appendices to the report of today's meeting, merely because copies of those acts are in short supply. If they are printed and appear in our reports, they will be readily accessible and available to everyone. Possibly these points which you brought up might be discussed at a later stage after we have heard the witness as to what other documents would be useful. At this time the order of reference deals specifically with the War Measures Act and its relation to the Bill of Rights, and those two would be printed as appendices.

Mr. ROBERGE: I would like the regulations especially to be made part of the proceedings.

The CHAIRMAN: I see no reason why the regulations, if you want to move that later on, should not be made part of the proceedings.

Mr. ROBERGE: I would so move.

Mr. AIKEN: I would like to ask a question at this point: are all these orders and regulations published?

Mr. FULTON: They are now. The problem is rather a physical one. The number of orders and regulations passed would occupy four or five feet of shelf space. It was a phenomenal number which was passed.

Mr. DESCHATELETS: Would the wartime prices and trade board regulations come under this?

The CHAIRMAN: I wonder if it would not be a better idea to wait until conclusion of our proceedings today, and after the draft bill has been brought up, at which time you might get in touch with Mr. Driedger, the deputy minister, with regard to what material you want included. It could be chosen by a selective process and a decision made as to what would be of use to the committee. With that in mind, a specific recommendation could be made, and included in the resolutions dealing with those particulars.

Mr. ROBERGE: For the time being I would be glad to have it taken under advisement.

Mr. FULTON: There has been only one regulation under the Bill of Rights. It would be no problem to reproduce it here.

The CHAIRMAN: Before we proceed to hear the details of this draft bill I would like to clear this point first. Might we now have a resolution asking that the War Measures Act and the Bill of Rights, chapter 44 of last year's statutes, be printed as appendices to today's proceedings so that they, at least, will be available?

Mr. ROBERGE: I so move.

Mr. AIKEN: I second it.

Motion agreed to.

The CHAIRMAN: I wonder if you would mind proceeding, Mr. Fulton, with regard to this question on the draft bill, or would you rather leave that to Mr. Driedger?

Mr. FULTON: I would rather Mr. Driedger spoke on the draft bill.

As I said, we delivered copies to Dr. Ollivier, and we do not have them here for the committee. However, they could be secured in a matter of minutes.

The CHAIRMAN: Is it the feeling of the committee that we should have these copies of this bill distributed before we proceed to the details of the draft bill?

Mr. KUCHEREPA: I so move.

Miss LAMARSH: Are we not wasting time; should we not let the minister finish his presentation on this bill, and then discuss it?

The CHAIRMAN: We have to send for these copies, Miss LaMarsh. Are you agreed we should receive copies of this bill, and then the minister can proceed?

Agreed.

Mr. FULTON: I had finished my statement, and I would now be glad to answer any questions.

Miss LAMARSH: Do not have too many questions.

Mr. AIKEN: I have a question, but it relates to whether or not the minister and the department had considered certain aspects of the present bill, which I think might be answered when I see it; and the same thing might apply to other members.

The one thing I would like to ask in a preliminary way relates to section 2, evidence of war, of the War Measures Act. Originally a state of war was declared by order in council and by proclamation. The end of war was also declared by proclamation. In passing the Bill of Rights, we provided certain protection whereby after the proclamation of a state of war being issued, parliament could debate it. This was well understood because of the question of urgency, which is even greater now than it was then.

I was going to ask whether there has been consideration given to the method of discontinuance of the state of war, and whether this could or should

not be done by an act of parliament rather than by proclamation. It seemed to me that the urgency having passed, and having given certain protection in the declaration of this state of war, we might well carry that same principle into the amendment by stating that the discontinuance of a state of war should be by act of parliament. It could then be brought in by a private member, by the government, or by anyone, and might avoid difficulties such as those which arose as late as 1955.

MISS LAMARSH: The difficulty would be that, presupposing we were at war, while those who would enact an order in council might still be alive, there might not be a parliament.

MR. FULTON: That is the problem, especially in this age where the likelihood of a nuclear war is possible and the initial attack would produce physical chaos and disruption. It is far too great a limitation to say that either parliament must authorize the declaration or that the proclamation has no effect until parliament meets and approves it, because it may be a matter of months before you can physically get parliament together.

MR. AIKEN: I am referring to the proclamation that the war has ended, which is the second part of section 2 of the present act, which might be ten years later.

MR. FULTON: You mean clause 2 of the present War Measures Act?

MR. AIKEN: Which says:

Until by the issue of a further proclamation it is declared that the war, invasion or insurrection no longer exists.

It seems to me that there is no urgency, and if a declaration of the state of war has been the subject of review by parliament, then it would seem logical that the end of the state of war might also be subject to review by parliament, because then there is no urgency.

MR. FULTON: It is true that the War Measures Act does contain a provision in section 2, but if I recall it correctly, what happened after the last war was that it was not carried out under that method. Two statutes were passed, namely the National Emergency Transitional Powers Act of 1945, and the Continuation of Transitional Measures Act, of 1947, which continued certain war orders in effect, but declared that, for the purposes of the War Measures Act, the war had come to an end. It continued, in effect, certain of the emergency powers relating largely to the sort of thing with which the war-time prices and the trade board dealt. The formula adopted then was that, for the purpose of the War Measures Act, the war was deemed to have been terminated on a certain date, and that certain of the powers conferred on the governor in council should be continued under the authority of the new statutes. We did not have a general statute or proclamation that the war had ended on a certain date.

MR. AIKEN: I do not want to go into the subject now, but I merely asked whether consideration had been given to that in the draft. I suppose we will see that when we get to it.

MR. FULTON: Not in the draft of this bill. I have been looking at this quickly and I think that if parliament felt that the government was carrying on under the emergency powers of the War Measures Act longer than was necessary, in view of the cessation of hostilities, it could take appropriate action.

MR. AIKEN: I do not want to make an issue at the moment, but it occurred to me last year in the discussion on the Bill of Rights.

MR. FULTON: It is a matter that could be considered in the course of discussion of the bill to amend the War Measures Act.

Miss LAMARSH: Obliquely to this point, and for the information of the committee, as we might want to discuss it later, can the minister say whether there is a provision in a statute stipulating the period of time that can elapse between sessions of parliament.

Mr. FULTON: The British North America Act says not more than twelve months should elapse.

Miss LAMARSH: I was thinking of a case where, under the War Measures Act, a government had in effect suspended operation of the Bill of Rights. If we were to adopt Mr. Aiken's suggestion, that parliament should have something to say about the end of hostilities, would the executive branch have the right to call parliament into session? This sort of thing has happened in other countries.

Mr. FULTON: The B.N.A. provision is that not more than twelve months shall elapse between the end of one session and the beginning of another.

Miss LAMARSH: So that if the executive branch wished, parliament could meet for a day and then prorogue?

Mr. FULTON: Subject to further checking, I suppose they could do that from twelve months to twelve months.

Mr. McPHILLIPS: It was done in 1940.

Mr. FULTON: I do not really see how it could be done practically. Theoretically it might be done.

Miss LAMARSH: Is there a limitation on how long you can proceed on warrants?

The CHAIRMAN: I wonder if these are really not problems which might be better considered when Mr. Driedger comes before us. These are problems which would flow out of our consideration of his interpretation of the draft bill.

I wonder if, having in mind the time, you would consider a motion to adjourn at this time. At 2.30 we will have available copies of the draft bill. It is now going to be part of the record.

AFTERNOON SITTING

MONDAY, June 26, 1961.

The CHAIRMAN: Gentlemen, I see a quorum. We can carry on. I have here the first draft bill which we referred to this morning, and the proposed amendments which the government has in mind. I will ask that those be distributed now.

The Minister of Justice has completed his statement, despite some of the interruptions which I made concerning motions. Are there any members of the committee who have questions to ask the minister, before we call on the deputy minister of Justice? If not, I will ask Mr. Driedger if he would be good enough to make a statement to the committee based in part on the draft bill. His comments will in part be directed to that.

I shall formally introduce Mr. Driedger, although he really needs no introduction, as the deputy minister of Justice and deputy Attorney General. As such he is charged with very considerable responsibility.

Mr. E. A. DRIEDGER (*Deputy Minister of Justice*): The War Measures Act was first enacted in 1914. It confers upon the governor in council wide powers to make orders and regulations having the force of law. It is not necessary here to dwell on the extent of these powers, but for the record I should like to

refer to some of the decisions of the Supreme Court of Canada and the judicial committee of the privy council in which the powers of the governor in council under this statute have been considered and defined. They are:

In re Gray, (1918) 57 S.C.R. 150;

Fort Francis Pulp & Paper v. Manitoba Free Press, (1923) A.C. 695;

Chemicals Reference, (1943) S.C.R. 1;

Japanese Reference, (1947) A.C. 87.

I have, with the assistance of the officers of my department, considered whether it would be possible to suggest some amendments to the War Measures Act that might bring the provisions thereof into closer harmony with the basic principles of the Canadian Bill of Rights. In this connection you will recall that the Bill of Rights contained a provision to the effect that any order or regulation made under the War Measures Act should be deemed not to be an abrogation, abridgement or infringement of any right or freedom recognized by the Canadian Bill of Rights.

Mr. McPHILLIPS: You cannot say black shall be deemed to be white. Some of these things are possible. For example, we have a bill before the house right now that is a physical possibility—where an office is deemed to be vacant.

But I take the example that black shall be deemed to be white. Subsection 5, in my opinion, is valueless. It is a sort of whitewashing section, because all it says is that, irrespective of what is done, it cannot be deemed to be an abrogation of these provisions.

Mr. DRIEDGER: I was merely drawing attention to the fact that the Canadian Bill of Rights did have that provision in it.

After considering the provisions of the War Measures Act in relation to the Canadian Bill of Rights, it seemed to us that some amendments could be made to the War Measures Act so as to make it more consistent with the Canadian Bill of Rights, but without prejudice to the effective operation of that act during an emergency.

Paragraph (a) of section 2 of the Canadian Bill of Rights provides that no law in Canada shall be construed or applied so as to authorize or effect the arbitrary detention, imprisonment or exile of any person. Paragraph (b) of subsection (1) of section 3 of the War Measures Act authorizes the governor in council to make regulations with respect to arrest, detention, exclusion and deportation. It was held by the judicial committee of the Privy Council in the Japanese reference that this provision authorized the governor in council to make orders for the deportation of Canadian citizens of Japanese origin. The Bill of Rights certainly brings into question the propriety of continuing the power by order in council to deprive any Canadian citizen of his citizenship or to banish or exile any Canadian citizen in any circumstances.

We came to the conclusion that the provision in the War Measures Act respecting arrest, detention, exclusion and deportation could, without in any way reducing the effectiveness of that provision during war time or other emergency, be restricted by prohibiting orders or regulations having the effect of depriving any Canadian citizen of his citizenship or of deporting, exiling or banishing any Canadian citizen from Canada.

During the debates on the Canadian Bill of Rights at the last session it was also suggested that the governor in council should be prohibited from detaining any citizen or resident of Canada without providing for an early trial on charges specifically laid in accordance with the law of the country. I do not think that an amendment in these terms would be feasible. Detention during time of war is based on security considerations and is not a matter that can be reviewed judicially by a court by the application of legal principles. Persons are detained during time of war, not necessarily because they have com-

mitted an offence, but because the security and the safety of the state demands it. However, it did seem to us that we could modify somewhat the powers given by the War Measures Act to authorize the detention of persons.

During the last war provision for detention was made by the defence of Canada regulations. Those regulations also provided for the establishment of advisory committees and any person who was detained had the right to make an objection to the advisory committee, which then considered the objection and made an appropriate recommendation to the Minister of Justice. The provisions respecting advisory committees were necessarily somewhat elaborate and it did not seem to me to be feasible to include such provisions in the War Measures Act. Moreover, they could not be included unless they were related specifically to other provisions authorizing detention. In order to include in the War Measures Act a self-operating provision for a review of detention orders, it would, I am afraid, be necessary to include in the War Measures Act detailed provisions comparable to the detention regulations that were contained in the defence of Canada regulations, and this would be contrary to the scheme of that act. The War Measures Act is an empowering statute designed to meet emergency conditions as they arise and as they change, and detailed provisions suitable to the conditions of today might not fit the conditions of tomorrow. For example, the consolidated defence of Canada regulations were issued four times during the last war, and my copy of the latest issue has noted in it thirty orders in council amending or enacting forty or fifty different provisions.

However, it was my thought that the War Measures Act could be amended to impose upon the governor in council the duty of providing machinery for reviewing the case of persons who are detained pursuant to regulations made under that Act.

The foregoing changes would be carried out by the amendments set forth in clause 1 of the draft bill. Under the proposed new subsection (3) of section 3 of the War Measures Act, the governor in council would be precluded from depriving any Canadian citizen of his Canadian citizenship and would also be precluded from deporting, exiling or banishing any Canadian citizen from Canada. Under the proposed new subsection (4), where any order or regulation is made for the detention of persons, provision must also be made for the review of the case of every person detained pursuant to such order or regulation.

Section 5 of the War Measures Act denies bail without the consent of the Minister of Justice to persons held for deportation or to persons under arrest or detention as an enemy alien or upon suspicion that he is an enemy alien. Paragraph (f) of section 2 of the Bill of Rights provides that no law of Canada shall be construed or applied so as to deprive a person charged with a criminal offence of the right to reasonable bail without just cause. Persons held for deportation or persons who have been arrested or detained under the War Measures Act would not necessarily have been charged with any criminal offence and, strictly speaking, that provision of the Canadian Bill of Rights might not be applicable. On the other hand, paragraph (a) of section 1 of the Bill of Rights states that it is the right of the individual to life, liberty and security of the person and the right not to be deprived thereof except by due process of law. It seemed to us that it would be more consistent with the Canadian Bill of Rights to delete section 5 of the War Measures Act, and that it ought to be sufficient to rely upon the judgment of the court or judge to grant bail or to refuse to grant bail for just cause, according to the circumstances of each case.

Section 8 of the War Measures Act provides for the seizure and forfeiture of ships or vessels used or moved, or any goods, wares or merchandise dealt with contrary to any order or regulation. It seemed to us that a blanket forfeiture provision such as this was not needed, and that if forfeiture is to follow the breach of any regulations, it should be imposed by the regulations themselves.

Section 9 is largely consequential upon section 8, and if section 8 is repealed, section 9 need not remain. It does refer to section 7, but the Exchequer Court of Canada or the superior or county courts of the province or the judges thereof have power, under the statutes constituting them, to make rules and they can therefore make any rules that are needed without the authority conferred by section 9.

Therefore, in clause 2 of the draft bill before you, provision is accordingly made for the repeal of sections 5, 8 and 9 of the War Measures Act.

The CHAIRMAN: Thank you, Mr. Driedger. Now, are there any questions which members of the committee would care to address to the witness in respect of the statement which he has made?

Mr. DESCHATELETS: I hope we will have some time to think this matter over and to examine this amendment before questioning. This is the first time I have received this bill, as any other member of the committee. I do not think we would be in a position to proceed with questioning now.

The CHAIRMAN: I understand from Mr. Driedger he is perfectly willing to be recalled and to be available to the committee at any time, if in their consideration they feel they would like to pursue further questioning. Therefore, if you want to question at this time, this is without prejudice to your right to ask Mr. Driedger to come back.

Mr. DESCHATELETS: In the Bill of Rights we have section 6, which deals with an amendment of the War Measures Act. I wonder if there is any reason for not having incorporated section 6 of the Bill of Rights into this bill. Section 6 of the Bill of Rights mentions the manner in which the War Measures Act comes into force, that the proclamation is to be tabled within 15 days when parliament is in session, and so forth. I was wondering if it would not be a good thing to have that in the War Measures Act?

Mr. DRIEDGER: It is part of the War Measures Act now, because the War Measures Act was amended in the Bill of Rights in that way. But, if there is a consolidation of the statutes, it would be included. If there were an office consolidation of the statutes we could include the new section 6.

Mr. DESCHATELETS: I do not see any reason why it should not be incorporated right now. If any person wants to examine the War Measures Act, and if this amendment is carried, someone will have to tell him to go and see the Bill of Rights to see how the War Measures Act is affected.

Mr. DRIEDGER: That would be true of any statute which is amended. You always have to check on the amendments.

Miss LAMARSH: You do not usually check another statute.

Mr. MCPHILLIPS: I think what Mr. Deschatelets means is that, in looking up the list of statutes, where an amendment is made you might not be able to find the amendment under the original heading.

Mr. FULTON: The way the index of our statutes is compiled is such that, if you look at the War Measures Act, you will find in 1960 the reference to the amendment made at that session, and it gives you the chapter of the bill which makes the amendment.

Mr. DRIEDGER: If you look at the marginal note opposite the enacting clause, you will find it gives you the citation of the chapter and section of the Canadian Bill of Rights that amends section 6 of the War Measures Act.

Mr. AIKEN: This morning we ordered copies of the War Measures Act to be printed and I am just wondering if the act, as amended, will be the one that is printed.

Mr. FULTON: I think, if I recall it rightly, you asked for copies of the War Measures Act and the Bill of Rights statute. You will find the totality of the provisions there.

Mr. AIKEN: If they print the War Measures Act will they include in it the section which was amended last year?

The CHAIRMAN: I would think, without anything more from the committee, it would be a verbatim copy of the War Measures Act as it appears, and a copy of the Bill of Rights as it appears, and when they are delivered to the committee members that, per se, would be what would be presented to committee members.

Mr. McPHILLIPS: I do not think as a committee we should embark on a consolidation of the War Measures Act.

The CHAIRMAN: If the committee so feels, and did so decide in order to assist them in considering this matter, there is no reason why, as Mr. Driedger has pointed out, he could not prepare a consolidation for the purposes of our discussions, and as such it would be printed.

Mr. AIKEN: I think that would be desirable. Then we could have a basis upon which to start and the War Measures Act, as it now stands, would be printed as one enactment.

The CHAIRMAN: What you have in mind, Mr. Aiken, is that the War Measures Act be printed with the addition—

Mr. AIKEN: Of section 6.

The CHAIRMAN: —of section 6 of the Bill of Rights, appended to the War Measures Act.

Mr. AIKEN: Yes.

Mr. ROBERGE: I have a technical point to raise. In the Canadian Bill of Rights, mention is made in section 6 of sections 3, 4 and 5 of the War Measures Act, but in the draft bill which we have before us reference is made to deleting section 5 of the War Measures Act. Would that necessitate a corresponding amendment to the Bill of Rights?

Mr. DRIEDGER: The Interpretation Act and the general operation of the statutes will take care of that. If there is a future revision of the statutes, it would be corrected at that time; but it would not be necessary to make that amendment at the same time as this.

Mr. ROBERGE: Following on the point raised by Mr. Deschatelets, the statement made by the deputy minister was, of course, very interesting and quite technical. I think we should have more time to study the record when it is printed, and then we can come back and ask questions of Mr. Driedger.

The CHAIRMAN: I think that has been made clear, Mr. Roberge, and the deputy minister will be prepared to answer the call of the committee and come back to answer points in which they are interested.

Mr. ROBERGE: It would be hard for us to ask questions today. It would be better to do that later.

The CHAIRMAN: I indicated that your questioning today would be without prejudice to your right to place questions at a later date.

Miss LAMARSH: I have a couple of points to raise, and I am sorry I was not here earlier. In bill C-62, which is before the house, the member for Essex East suggested that not only was there some question of deprivation of citizenship, but apparently there was also the question of being a British subject. I do not know if there is a historical reason for that. Perhaps the deputy minister will know, and tell us if it could be included in this draft bill.

The second point which occurs to me regarding the draft bill is that there certainly seems to be a wide possibility for arbitrary action, which we are trying to prevent. It is stated that a review of the cases may be made, but

the review may be made by some minion in the basement of the Department of Justice, and that review would be satisfactory to comply with the statute. That is hardly the kind of thing we would want.

Mr. DRIEDGER: On your first question, I have not considered the bill to which you refer, and in the statement I made this afternoon I pointed out that we did a lot of work on the War Measures Act in the summer and fall of last year, some time before the introduction of the bill to which you refer. Secondly, I would direct your attention to the Citizenship Act, where it is provided that a Canadian citizen is a British subject. That is the reference to a British subject in connection with Canadian citizenship, and I do not know why it would be necessary to refer to British subjects as well as to Canadian citizens in the context to which you refer.

Miss LAMARSH: I do not know, why either. I was wondering was there any historical reason for it?

Mr. DRIEDGER: I do not know.

Miss LAMARSH: Is there any case of a person being deprived of the status of citizenship?

Mr. DRIEDGER: The only thing in that connection of which I am aware is the Japanese reference.

Mr. DESCHATELETS: If it is true to say a Canadian is a British subject, is the reverse the same?

Mr. DRIEDGER: Not necessarily. On the second question asked by Miss LaMarsh, I dealt with that earlier and I believe the statement I have on the record will answer it.

Miss LAMARSH: When you talk about review, under the Bill of Rights, section 3, there is provision that the Minister of Justice shall, in accordance with the regulations, examine every bill introduced and presented to the House of Commons. I wonder if bill C-62 has been so examined?

The CHAIRMAN: I wonder if you would mind speaking a little louder.

Miss LAMARSH: What for?

The CHAIRMAN: I was thinking of the reporter.

Miss LAMARSH: I wonder whether someone in the Department of Justice has, pursuant to the provisions of section 3 of the Bill of Rights, looked at bill C-62.

Mr. DRIEDGER: I think that would have happened but I did not bring any of those records with me, nor consult them before I came. I cannot answer that from my personal knowledge. I feel certain it was done, but I can let you know about that later.

Miss LAMARSH: I am sorry, I could not hear what you were saying about the regulations and orders that might be enacted. You said you had dealt with this just before I came in.

Mr. DRIEDGER: Would you repeat the question?

Miss LAMARSH: Which one? What I wanted to find out was your answer to the question on the type of review which might be made.

Mr. DRIEDGER: I pointed out I had dealt with this earlier and perhaps the statement I made, and which is on the record, would be sufficient for the time being to answer you.

Miss LAMARSH: Are these records being printed so that we shall have them to-morrow, or shall we have to wait for a week or two?

The CHAIRMAN: They will hardly be printed to-morrow, but I shall try to find out precisely when they will be ready, before the meeting concludes.

Mr. DESCHATELETS: I think the point raised is very important and I believe it would improve the bill. I think the witness should elaborate again on the kind of review contemplated in these cases.

Mr. DRIEDGER: The draft here provides that provision be made for review and, as I explained earlier, the problem is that a review of this kind is not an ordinary judicial review, because persons are detained who may, or may not, have committed actual offences. It is impossible to ask a court to review a case of detention on the basis of legal principles. It is a policy review.

I did point out that in the defence of Canada regulations, as they existed during the last war, there was provision for detention and there was provision for review, a fairly elaborate provision which covers about four pages in the defence of Canada regulations. My feeling, when we were considering this, was that it would not really mean very much to say a case should be reviewed unless we set out what is the procedure for review, and we could not do this unless we set out the procedure for detention, so that we would be faced with putting into the War Measures Act detention regulations and review regulations.

It did not seem to me the War Measures Act was the appropriate place to do that because it is an empowering act, designed to authorize the governor in council to make regulations from time to time as need arises. Instead of trying to spell out in the War Measures Act detailed provisions for detention and review, it seems to me it would be better to impose upon the governor in council the duty of providing review machinery if new detention regulations are made.

Miss LAMARSH: May I make this observation? From what the deputy minister has said, it frightens me a little bit. It seems to me what we are doing is taking out of the bill, which is much more readily accessible to the public, powers which the executive would have in time of emergency and sticking them in the regulations. You are just going to have the same powers to do the same arbitrary things which are against everyone's rights. You are trying to get a bill which will look all right, but which will leave you these powers under the regulations.

Mr. FULTON: The power to detain is not taken out of the War Measures Act, through this draft.

Miss LAMARSH: But the power to detain will also be subject to review, and sections 5, 8 and 9 are taken out.

Mr. FULTON: But, as we understood it, you were talking about the provision for review in the case of detention of any person, and the power to detain is not taken out of the War Measures Act by this amendment.

Miss LAMARSH: But the other powers which are being taken out will, in effect, remain, because the powers that are given are pretty general. We are not touching section 3, and under this the executive can still do pretty well as it chooses by regulation.

Mr. DRIEDGER: To what powers are you referring?

Miss LAMARSH: You are taking out sections 5, 8 and 9.

Mr. DRIEDGER: Yes.

Miss LAMARSH: And in particular section 8, which provides for the forfeiting of ships. This is being taken out.

Mr. DRIEDGER: Yes. As I explained, section 8 of the War Measures Act as it now stands imposes an automatic forfeiture, so that in all cases a forfeiture would follow. By taking that provision out you do not have an automatic forfeiture. If forfeiture is to be provided, it would have to be provided by the specific order made. We thought that would be ameliorating the position somewhat, but perhaps you do not think so.

Miss LAMARSH: I do not think it does any good, if the power to seize is arbitrary. I do not think you can reconcile the Bill of Rights and the War Measures Act. I think we are wasting our time trying to do that. I think what we are engaged in is just a discussion of words.

Mr. FULTON: May I answer that? I referred this morning to the difficulty of reconciling the two positions. May I put it this way? We felt it could be provided that the powers contained in the War Measures Act might be limited with respect to our exercising them in a manner that would make the whole situation more in conformity with the Bill of Rights. It is not our position that this legislation will preserve in time of war all those rights and freedoms untrammelled, which are referred to in the Bill of Rights, but we are applying appreciable limitations upon the powers of the governor in council to take them away, even in time of war.

Miss LAMARSH: Yes, all the limitations, except to call for a review, which is not spelled out and which could mean a minister taking home all the files on a case, firing them at his wife, and saying: "what do you think about that"?

Mr. FULTON: With respect to the power to limit, I think the limitations are quite meaningful. You cannot deprive a person of his citizenship if the amendment is accepted, nor can you deport a Canadian citizen under order of the governor in council, which are both powers contained in the present War Measures Act.

Miss LAMARSH: Have you ever deported anyone, or deprived anyone of citizenship rights?

Mr. McPHILLIPS: Yes.

Mr. FULTON: The Japanese.

Miss LAMARSH: We did not deport citizens of Canada?

Mr. FULTON: Yes.

Mr. DRIEDGER: The Japanese reference, which I mentioned, was a case of the judicial committee of the privy council upholding the validity of orders which provided for the deportation of Canadian citizens of Japanese origin.

Miss LAMARSH: Were they also deprived of Canadian citizenship?

Mr. DRIEDGER: I would have to check the orders to see.

Mr. ROBERGE: An enemy alien can still be deported under the proposed bill?

Mr. FULTON: Pardon?

Mr. ROBERGE: An enemy alien is still liable to be deported, if the proposed amendment is carried?

Mr. DRIEDGER: This deals only with Canadian citizens.

Mr. ROBERGE: Even a friendly alien could be deported?

Mr. DESCHATELETS: I should like Mr. Driedger to tell us if clause 1 (4) of the bill, providing for the review of cases—

The CHAIRMAN: Which act, Mr. Deschatelets?

Mr. KUCHEREPA: The proposed draft.

Mr. DESCHATELETS: Is this an improvement upon the provision contained in the War Measures Act as it exists at present? I am under the impression that there was provision for a review.

Mr. DRIEDGER: Under the present War Measures Act there is no obligation to provide review machinery, although that was done in the defence of Canada regulations, but there was no obligation on the governor in council to do so.

Mr. DESCHATELETS: I am just asking what is the improvement in fact over the existing law?

Mr. DRIDGER: The most this would do would be to impose an obligation upon the governor in council to provide such machinery, an obligation that did not exist previously.

Mr. DESCHATELETS: Is there any reason why we should not emphasize and outline the kind of review we want made in these cases? What kind of review will it be, and who will be responsible for it? I think this is important.

Mr. MCPHILLIPS: I think the way the draft bill is drawn at present means this is to be done concurrently, so that when an order for detention is made provision for review must be made at the same time.

Mr. KUCHEREPA: I agree with the suggestion made by Mr. McPhillips but, under the clause which Mr. Deschatelets has mentioned, I should like to know what kind of review will there be for these cases? Can we not spell it out in some concrete form?

Mr. FULTON: The deputy minister in his statement pointed out the difficulty of providing provisions now which are going to be applicable at a time in the future, when you do not know how long in the future they will become applicable, nor the circumstances in the future when they must be applied. If detailed provisions that must be followed were now spelled out, then not only would it be necessary to spell out the detailed provisions regarding detention but also the detailed provisions with regard to review; none of those might be practicable at the time it becomes necessary to put them into effect.

Mr. KUCHEREPA: I agree there is that difficulty but I think we should designate the person who will be carrying out the review. Even in wartime we still have parliament. Parliament can always amend; parliament can always look at this in case of war, and there should be something on the statute books when there is enabling legislation and empowering legislation which will tell us review by whom—by the courts or by a commission?

Mr. ROBERGE: In that sense, I might go a little further before the deputy minister answers. The Bill of Rights states:

no law of Canada shall be construed or applied so as to...

(e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;

While subclause 4 of clause 1 of the draft bill merely speaks of "review". In my estimation there is a great difference between a fair hearing and a simple review. Would the deputy minister enlarge on those thoughts? I would take it that a fair hearing would mean that the person detained under the War Measures Act, as proposed, would be heard in his defence. A review could be made only within the department or by other machinery which would not enable the person detained to be heard.

Mr. DRIEDGER: It is very difficult to try to set out a new procedure in the abstract without considering at the same time the actual detention regulations. The two must be complementary to each other. That is the difficulty in considering this problem. If you start to set up review machinery you have to know what your detention machinery is. If you put the two together, you then have your detention regulations and your review regulations, as you had them in the defence of Canada regulations during the last war. But we do not know whether those regulations, as they existed during the last war, will suit the conditions of tomorrow. We cannot anticipate what these regulations will be. That is the difficulty in trying to set up precise new machinery for provisions for detention.

Miss LAMARSH: No matter what we do to try to bring the spirit of the two acts together—which is impossible—it does not make any difference what we do to the War Measures Act, because we always have the savour of the

Bill of Rights. Anything done under the War Measures Act is not an abrogation of the rights under the Bill of Rights. You can do anything you want to—stretch the phraseology as far as you like—and it will never be subject to review afterwards as to whether it infringes the spirit of the act or its phraseology.

Mr. ROBERGE: I quite appreciate the difficulties expressed by the deputy minister, but this is the point: the Bill of Rights speaks of “a hearing”, and here we speak of “review”. That is the major difference. If we are here to try to reconcile the two, I think that the word “hearing” has a much wider meaning than the word “review”. Was there any thought given to the use of the word “hearing” in the draft bill, instead of “review”?

Mr. DRIEDGER: It is difficult to try to anticipate the kind of review. It seems to me that it is more or less a matter of words. You can call it a review or a hearing.

Mr. ROBERGE: During the war, Mr. Chairman, I was stationed here at the courts martial section of J.A.G. We were reviewing courts martial, but we were not hearing the defendants. I think there is a major difference there.

Mr. DRIEDGER: The defence of Canada regulations did provide that a person on objecting to his detention might be represented by counsel, solicitor or agent. There was an actual hearing. An advisory committee was established where objections were made and a person's case was heard by that committee.

Miss LAMARSH: What we are trying to get at are things such as the Japanese case, which should never occur again. Are we going to ignore that these things may occur again?

Mr. DRIEDGER: Under this amendment they could not happen.

Miss LAMARSH: You could not take away their citizenship but you could dislocate them from their homes, grab their property and stick them out in Aklavik or some place even if this amendment were passed. It is a matter of degree, whether you send them out of the country or what you do with them.

Mr. FULTON: It is hardly a matter of degree whether you deprive them of citizenship. Those are not matters of degree, they are matters of principle. The Japanese case was an order providing for deportation—I am not clear whether it provided specifically for loss of citizenship.

Miss LAMARSH: With those two limitations, can you do anything other than was done during the war, even though this amendment came into effect?

Mr. DRIEDGER: Perhaps I can answer you this way. During the last war—I am sure you are too young to remember, Miss LaMarsh—we had many regulations that interfered with personal liberty and movement—we had selective service regulations, manpower regulations and many other regulations that affected the rights of individuals. The only way to ensure that none of those things could be done again would be to repeal the War Measures Act in its entirety and substitute nothing for it. You mentioned the Japanese. Under this proposed amendment they could not be deprived of their Canadian citizenship, they could not be deported or sent out of Canada. That does not mean, however, that they could not be affected in the same way as any person in Canada or any Canadian citizen could be affected by regulations which might be made under the War Measures Act. The only way to avoid that would be to repeal the War Measures Act.

Miss LAMARSH: We are still in the position that the government, having made a declaration of national emergency, could take the residents of every city and throw them into jail without hearings or anything else, and leave them there until such time as the proclamation was revoked. You are still going to retain all the arbitrary powers of the state except deportation and loss of citizenship.

Mr. FULTON: And the automatic forfeiture.

Miss LAMARSH: In practice it could be automatic; the regulations could make it automatic, could they not?

Mr. DRIEDGER: They could.

Mr. FULTON: The regulations would have to lay down the conditions upon which the forfeiture would be automatic.

Miss LAMARSH: It could be as wide a phraseology as in the act. This is the problem: whether we feel that what we are going to do is to try to protect citizens from that sort of arbitrary conduct. If, in other words, there is a standard, notwithstanding national emergency, and we will not go against it, thus affecting the rights of private citizens, what we first ought to do is to arrive at the standard and try to frame the legislation around it. If, on the other hand, we agree that when there is a national emergency the rights of individuals are not important at all, then we ought to recognize that.

Mr. FULTON: To put it in another way, if you agree that in a true national emergency the rights of the state are paramount, then the War Measures Act, with only such modifications as we make, is what we need. If you adopt the principle that even in national emergency the rights of the individual are paramount, then I agree with you we should scrap the War Measures Act.

Miss LAMARSH: Is it not the first thing the committee should do, decide which of the two positions it wants to implement?

Mr. FULTON: That is so. At least that is a possible approach to it. I can only say that in the approach we took, which resulted in this draft bill, we have taken account of all suggestions made to date. I do not read into any of them the point of view or the principle which says that even in times of true national emergency the rights of the individual are paramount. Most of the witnesses, if not all that I can recall, took the position that in times of national emergency you do need some legislation that recognizes that the paramount interest is the safety of the state. So far as the members of the house are concerned, certainly that was their view.

I am not able to say that all the witnesses appearing before our committee on the Bill of Rights last year did not go further than I have said, but certainly the great majority of them, in their approach to the problem, were prepared to say that in times of true national emergency the interest of the state is of paramount consideration. What you should do is to see what limitations you can place on the powers of the state.

Miss LAMARSH: If I may follow this, no one remembers whether the Japanese were deprived of their citizenship. In that instance they were deported from Canada. Were there ever any other cases since 1914 where any other group of people or single individuals were deported under the War Measures Act?

Mr. FULTON: The technical answer to your question would be that I think at that time we did not have Canadian citizenship as a legal concept, so it could not be taken away. A British subject with domicile in Canada would be a Canadian national. Today they would have been entitled to Canadian citizenship and effectively deprived of citizenship by an order of deportation.

Miss LAMARSH: Were they deprived of their status as British subjects?

Mr. BRYCE: I think not.

Miss LAMARSH: Has there ever been a case where one has been deprived of citizenship as a British subject or as a Canadian citizen? Has anyone been deprived of this under the War Measures Act?

Mr. FULTON: In effect only the Japanese were placed in that position.

Miss LAMARSH: Were they the only individuals deported from Canada under the War Measures Act in the last 46 years?

Mr. FULTON: I do not know. I cannot answer categorically, but theirs is the outstanding case.

Mr. KUCHEREPA: My question would be a basic one. I presume the department has probably done this. They have studied comparable legislation which exists in the United Kingdom and the United States, which is likely similar to ours. They have a Bill of Rights both in the United Kingdom and in the United States. In the United Kingdom it is based on the premise of being a British subject, and in the United States on the premise of being an American citizen. Both are comparable to ours. They have in their statutes, also, something comparable to our act. Has the department made a study of the situations which may exist in these other areas and, if so, could we have the benefit of that information?

Mr. DRIEDGER: Not in connection with this, and perhaps not in the context you have in mind. In the United Kingdom the Bill of Rights is not quite the same as the one we have here. During the first and second wars they had what they called the Defence of the Realm Act, and regulations thereunder. I know that the defence of Canada regulations in the 1939-45 war were modelled after the regulations in the United Kingdom, either their regulations or their Defence of the Realm Act.

They have had many provisions like this during the last war and since then, and perhaps in many respects they have gone a good deal further than we have, because obviously they needed to during the last war when Britain was under direct attack. They carried their emergency powers into the postwar period much more completely and for a longer period than we have. I have not looked at that lately.

Miss LAMARSH: To complete this line of questioning, does the minister honestly feel now, as a legislator of some standing and a minister of the crown, and bearing in mind the outcry of the public both as to the American treatment and Canadian treatment of Japanese people during the last war, that such an action could be politically justifiable again? That has happened only once in the last 46 years.

Mr. FULTON: I would not want, especially in a discussion of this type, to point to one incident and assess its political turpitude or otherwise.

Miss LAMARSH: I do not mean party politics.

Mr. FULTON: At the time the Japanese order was made there were felt to be good and sufficient reasons for making it. As I recall it, that view was shared by a large number of people. On the other hand, there were many people who took the view that nothing would ever justify such a thing being done. The fact is that it is part of the record of our conduct in Canada, and when it seems desirable, as it seems now, no one would object to a provision being placed in the War Measures Act to make it impossible to do it again. Whether it were done once or a hundred times, or to one or a hundred persons, does not seem to me really to influence the discussion here. What we should look at, and fortunately we have the time to look at it now, is the question of whether such a thing would ever be possible again, or should we make it impossible?

Again, when we speak of the rights of individuals as against the rights of the state, I think it is important to bear in mind that even what is done against one or a few individuals must have justification because it is done for the protection of the lives and safety of all the people in Canada or the Canadian nation as a whole. That is my view at the present time, that in times of true emergency it is the protection of the great majority of individuals which must become the paramount consideration, and in times of emergency and times of war it can only be done under the aegis of emergency or wartime

powers. Even so, it is in principle desirable to have some limitation, whatever limitations one can properly and safely place on the power of the state to interfere with what would otherwise be the normal rights of even one individual.

Miss LAMARSH: With respect, in the way the minister is speaking, I think it sounds as if the changes to be made in the War Measures Act now would be immutable and could not be amended by parliament sitting at that time. If the same situation arose and the people of Canada found they had to deport any one group, they would just amend it. That is all.

Mr. FULTON: It is true it could be amended, but then you must remember that it may be many months before it would be possible to get parliament together. This may cut both ways. There could be too much restriction on the powers of parliament, and there could be national disaster because parliament could not act. From that point of view it would be necessary to take into account that parliament might not be able to meet, to make improvements, rectifications or modifications, for months after the outbreak of war.

Miss LAMARSH: If, for some reason the state felt it critically necessary to get rid of a certain group—I am not suggesting this might be it, but it occurred to me that it could be some of the sons of freedom—if at that time it was felt that we simply could not support the sons of freedom in the body politic, if we were at war with mother Russia, would you have the same restriction because you could not get parliament together and get deportation legislation passed.

Mr. FULTON: That is correct. The only thing you could do then is to detain them.

Miss LAMARSH: It might work better for the interests of the state to leave it in.

Mr. FULTON: That, of course, is a matter of opinion. The exercise we are going through here, which I am convinced is not purely an exercise in the abstract, is to have our laws brought, in so far as possible, in conformity with the spirit of the Bill of Rights. There are at least two or three areas where we think positive moves could be made and we are recommending them here. The practical value of this may not be great, in that you may be correct in the suggestion you made a while ago, that this would never be done. Therefore, as a matter of practice, we may not be bringing about any significant changes by these proposed amendments; but I think in the over-all context there is the question of what we are going to have on our statute books, and we would be making a significant change. That is the exercise which we are going through here, bearing in mind at the same time that we do have to look at the practical implications of any change we make, from the point of view of whether or not it places too great a restriction on the powers that the government have in wartime to look after the over-all national interest. We think that these proposals are a proper reconciliation. I do not want to exaggerate the matter of the practical effect, but I do suggest that they are desirable and meaningful from the point of view of bringing the War Measures Act into conformity with the spirit of the Bill of Rights in so far as the right of personal liberty is concerned.

The CHAIRMAN: Is there any more discussion at this time? May I point out first that there are two members of the committee who have indicated the necessity of attending to previous engagements, long and previously made, for 4 o'clock. I was about to propose we might adjourn by 4 o'clock. With that in mind, I thought I should mention this.

Mr. KUCHEREPA: Is it possible for the department to obtain information as to what methods of review in similar cases might be made in the United States, where they have their Bill of Rights probably affecting the picture as well as we have? Since our composition as a nation is very comparable to that of the United States, their experience might be of some assistance to our committee?

Mr. DRIEDGER: We might be able to get that information. It might be easier if the committee itself were to approach the United States government and ask for the information. I am quite sure we have not got any such information on our files. I do not remember seeing it.

Miss LAMARSH: If we ever need to use this act again, there will not be any cabinet or any government left, so there may not be any such need.

Mr. FULTON: We hope there will be this prospect that we will be able to preserve some semblance of organized government, even in a nuclear war. We firmly hope so. I do not know, but I certainly do think that we must do what we can to make it possible.

Mr. DESCHATELETS: Now that this bill has been introduced, are we going to proceed in the same manner as last year when we had the proposed Bill of Rights, and then we had witnesses who gave their views? Are we going to proceed in the same way?

The CHAIRMAN: I understood from what the committee had discussed earlier, and from what the Minister of Justice said, that we would go, prior to the adjournment, to the stage where this amendment would have been presented; so that the committee would have in its mind some idea of what the government proposes, and that this amendment would be given some publication, so that people interested would know and could make representations. Of course, I do not know when we will adjourn, but I assume we will not have too much time to go into the details any more than what we are doing today. Witnesses or people who are interested and wish to make statements, no doubt will be in touch with us after the adjournment, and they will have an opportunity to make their views known and make representations to the committee. Of course, I am in the hands of the committee as to what procedure we should adopt.

Mr. DESCHATELETS: Who is going to decide about the list of witnesses?

The CHAIRMAN: I would assume the steering committee would do so.

Mr. DESCHATELETS: We might expect that some people who have been detained for some years under the War Measures Act might like to come here.

The CHAIRMAN: To give expert evidence?

Mr. MANDZIUK: From experience.

Mr. FULTON: I hope the question of the propriety, or otherwise, of their detention will not come up, as that is not a matter that should be dealt with,—whether they have any claim for illegal detention which they might seek to put forward here. In the case of people who can throw any light on detention, if you ask any man who himself was a detainee or internee during the last war his major purpose will be to come and say: "I am entitled to so many dollars".

The CHAIRMAN: He would not have the objective approach.

Miss LAMARSH: We have our own private cards.

Mr. MCPHILLIPS: Has anything been done, possibly to make some public statement that organizations are entitled to submit briefs to us—or do we not want to go that far?

The CHAIRMAN: I imagine that is something the steering committee might well consider. The steering committee would have to meet, after we have brought our deliberations to a conclusion, and would have to give some consideration then to the point as to how we would make known the fact that we would like to hear evidence, or at least that we were not going to oppose people who want to make representations, people who are extremely interested in coming before us here.

Before we adjourn, I want to bring up two matters. We started to discuss the consolidation of the two statutes, the Bill of Rights and the War Measures Act, and we have not yet concluded as to what we wish to do, as to whether

or not we wish to amend the motion we had this morning, which would permit the consolidation as worked out by Mr. Driedger being printed now. What are your views on that?

Mr. KUCHEREPA: If you were to amend the War Measures Act with the draft now being studied, there would have to follow consequential amendments in the Bill of Rights. Section 5 would be repealed, and therefore section 6 of the Bill of Rights would have to be amended.

Mr. FULTON: No, no.

Miss LAMARSH: I would think that for everyone who makes use of these proceedings and also for our own ready reference, a consolidated bill, to delete section 6 and substitute the new section 6, should be printed, which would make it easier to refer to it.

Mr. FULTON: May I point out that the purpose of the blanket clause 1 is fully explained in the explanatory notes. It is not amending, it is merely adding.

Mr. KUCHEREPA: I am not talking about the draft bill at all. I am talking about the War Measures Act as amended by the Bill of Rights.

Mr. FULTON: To put all that in one printing, to put the new clause 6 enacted last year into the War Measures Act?

The CHAIRMAN: I wonder if it would be agreeable to the committee if we put the two measures as they were originally, and then the consolidation? This discussion has proceeded on the basis of certain sections and subsections, and there might be some confusion if we did not have available for observation the two separate acts, to start with. I may be wrong. I noticed that members of the committee, in directing questions, referred to sections specifically; and if we placed the two acts together, you might lose the benefit of the questioning which you have pursued already.

Mr. DRIEDGER: What we could do is to prepare a consolidation of the War Measures Act with the new section that was added or enacted as part of the Bill of Rights last session, so that it would appear as the War Measures Act that exists in law today; and in a footnote we might indicate what the former section was. In that way you would have reference to both.

The CHAIRMAN: That is fine. Is that agreeable to the committee?

Agreed.

The CHAIRMAN: In regard to the proceedings on Wednesday, I know some of you have indicated you might like some time to consider statements made by the Minister of Justice and Mr. Driedger. There will be available Mr. Bryce of the privy council, and he has intimated to me that he would be available for the committee on Wednesday.

Mr. DESCHATELETS: At what time?

The CHAIRMAN: The meeting is tentatively set for 2.30 on Wednesday. If the committee feels it would prefer to proceed with Mr. Driedger's examination, or, as you suggested, you would like some time to consider it, would you prefer to ask Mr. Bryce to appear on Wednesday afternoon and later take up the examination of Mr. Driedger? What is your pleasure in regard to that?

Miss LAMARSH: Before that is put, Mr. Chairman, when might we have the report of today's proceedings? Will we have it before Wednesday?

The CHAIRMAN: I understand that it is a matter of printing. It will be typed. I am instructed that it will not be printed before Wednesday.

Mr. ROBERGE: If we do not have the printing before Wednesday, in my view it is no use to sit on Wednesday.

The CHAIRMAN: That is why I suggested you might like to examine Mr. Bryce, who might have a different approach on this matter; and defer Mr. Driedger's examination until there is available a transcript of these proceedings.

Mr. ROBERGE: Is Mr. Bryce going to have a statement to make?

The CHAIRMAN: I think he has intimated that he will have a statement to make on one or two points.

Mr. BRYCE: I am in the hands of the committee. As far as we are concerned, in the emergency measures organization we can furnish the committee with some information as to the nature of the situation for which we are prepared and what its bearing is on the War Measures Act, but it does not relate particularly or relate substantially to the points that were under discussion today.

The CHAIRMAN: It is more a background?

Mr. BRYCE: If the committee wants that at this time, it can be done.

The CHAIRMAN: What is your view?

Miss LAMARSH: 2.30 p.m. on Wednesday.

The CHAIRMAN: Do you wish Mr. Bryce?

Agreed.

Mr. ROBERGE: I come back to what I asked this morning, in regard to the regulations passed under the War Measures Act. I agree that it might be a hard thing to get. I also ask if the regulations passed under the Bill of Rights could be put in a list, which I would like to have distributed amongst the members of the committee. I suppose that is feasible?

Mr. DRIEDGER: Yes, there is only one set of regulations. They run to only a page and a half or two pages, and the Clerk will provide them.

Miss LAMARSH: In reference to what I asked this morning, might it be possible to have a list of the type of regulations which were enacted, so that we would know what has to come under its purview? It would not be necessary to have the regulations, but a list of what is composed in them. You said a while ago something about prices coming under that.

Mr. DRIEDGER: These orders went into many thousands. I do not know how we could prepare a list.

Miss LAMARSH: Or even a general statement, showing the type of things which would come under this act.

Mr. DRIEDGER: It would cover the whole field. We could give an index.

Mr. FULTON: Mr. Bryce has the rather startling statistic that there were 16,000 orders in 1942 alone, most of them having a relation to the War Measures Act.

Miss LAMARSH: Could we have some idea of what they would cover?

Mr. DRIEDGER: If it would be of some help to the committee, I might say that, while I cannot look through all the orders, I would be prepared to look through some of the indices and prepare a selective list indicating some of the main orders made under the War Measures Act, as for example, those that cover selective service, labour regulations, wartime prices and trade regulations, defence of Canada regulations, and so on. I could pick out a group to give a fairly good idea of what they cover.

Mr. ROBERGE: We would start with that.

APPENDIX "A"

Revised Statutes of Canada (1952.)

CHAPTER 288.

An Act to confer certain powers upon the Governor in Council in the event of War, Invasion, or Insurrection. (Consolidated as at June 26, 1961)

SHORT TITLE.

1. This Act may be cited as the *War Measures Act*. R.S., c. 206, Short title. s. 1.

EVIDENCE OF WAR.

2. The issue of a proclamation by Her Majesty, or under the authority of the Governor in Council shall be conclusive evidence that war, invasion, or insurrection, real or apprehended, exists and has existed for any period of time therein stated, and of its continuance, until by the issue of a further proclamation it is declared that the war, invasion or insurrection no longer exists. R.S., c. 206, s. 2.

POWERS OF THE GOVERNOR IN COUNCIL.

3. (1) The Governor in Council may do and authorize such acts and things, and make from time to time such orders and regulations, as he may by reason of the existence of real or apprehended war, invasion or insurrection deem necessary or advisable for the security, defence, peace, order and welfare of Canada; and for greater certainty, but not so as to restrict the generality of the foregoing terms, it is hereby declared that the powers of the Governor in Council shall extend to all matters coming within the classes of subjects hereinafter enumerated, that is to say:

- (a) censorship and the control and suppression of publications, writings, maps, plans, photographs, communications and means of communication;
- (b) arrest, detention, exclusion and deportation;
- (c) control of the harbours, ports and territorial waters of Canada and the movements of vessels;
- (d) transportation by land, air, or water and the control of the transport of persons and things;
- (e) trading, exportation, importation, production and manufacture;
- (f) appropriation, control, forfeiture and disposition of property and of the use thereof.

- (2) All orders and regulations made under this section shall have the force of law, and shall be enforced in such manner and by such courts, officers and authorities as the Governor in Council may prescribe, and may be varied, extended or revoked by any subsequent order or regulation; but if any order or regulation is varied, extended or revoked, neither the previous operation thereof nor anything duly done thereunder, shall be affected thereby, nor shall any right, privilege, obligation or liability acquired, accrued, accruing or incurred thereunder be affected by such variation, extension or revocation. R.S., c. 206, s. 3.

4. The Governor in Council may prescribe the penalties that may be imposed for violations of orders and regulations made under this Act, and may also prescribe whether such penalties shall be imposed upon summary conviction or upon indictment, but no such penalty shall exceed a fine of five thousand dollars or imprisonment for any term not exceeding five years, or both fine and imprisonment. R.S., c. 206, s. 4. Imposing penalties.

5. No person who is held for deportation under this Act or under any regulation made thereunder, or is under arrest or detention as an alien enemy, or upon suspicion that he is an alien enemy, or to prevent his departure from Canada, shall be released upon bail or otherwise discharged or tried, without the consent of the Minister of Justice. R.S., c. 206, s. 5. Release of arrested alien forbidden.

6. (1) Sections 3, 4 and 5 shall come into force only upon the issue of a proclamation of the Governor in Council declaring that war, invasion or insurrection, real or apprehended, exists. Coming into force by proclamation. Rep. and New. 1960, c. 44, s. 6.

(2) A proclamation declaring that war, invasion or insurrection, real or apprehended, exists shall be laid before Parliament forthwith after its issue, or, if Parliament is then not sitting, within the first fifteen days next thereafter that Parliament is sitting. Proclamation to be submitted to Parliament. New. 1960, c. 44, s. 6.

(3) Where a proclamation has been laid before Parliament pursuant to subsection (2), a notice of motion in either House signed by ten members thereof and made in accordance with the rules of that House within ten days of the day the proclamation was laid before Parliament, praying that the proclamation be revoked, shall be debated in that House at the first convenient opportunity within the four sitting days next after the day the motion in that House was made. Opportunity for debate. New. 1960, c. 44, s. 6.

(4) If both Houses of Parliament resolve that the proclamation be revoked, it shall cease to have effect, and sections 3, 4 and 5 shall cease to be in force until those sections are again brought into force by a further proclamation but without prejudice to the previous operation of those sections or anything duly done or suffered thereunder or any offence committed or any penalty or forfeiture or punishment incurred. Revocation of proclamation by resolution. New. 1960, c. 44, s. 6.

(5) Any act or thing done or authorized or any order or regulation made under the authority of this Act, shall be deemed not to be an abrogation, abridgement or infringement of any right or freedom recognized by the *Canadian Bill of Rights*. Canadian Bill of Rights. New. 1960, c. 44, s. 6.

PROCEDURE.

7. Whenever any property or the use thereof has been appropriated by Her Majesty under the provisions of this Act, or any order in council, order or regulation made thereunder, and compensation is to be made therefor and has not been agreed upon, the claim shall be referred by the Minister of Justice to the Exchequer Court, or to a superior or county court of the province within which the claim arises, or to a judge of any such court. R.S., c. 206, s. 7. Fixing compensation.

8. Any ship or vessel used or moved, or any goods, wares or merchandise dealt with, contrary to any order or regulation made Forfeitures.

under this Act, may be seized and detained and shall be liable to forfeiture, at the instance of the Minister of Justice, upon proceedings in the Exchequer Court of Canada or in any superior court. R.S., c. 206, s. 8.

9. Every court mentioned in the two sections last preceding Rules. may make rules governing the procedure upon any reference made to, or proceedings taken before, such court or a judge thereof under the said sections. R.S., c. 206, s. 9.

Section 6 formerly read as follows:

6. The provisions of the three sections last preceding shall only ^{Limitation.} be in force during war, invasion, or insurrection, real or apprehended. R.S., c. 206, s. 6.

APPENDIX "B"

THE CANADIAN BILL OF RIGHTS EXAMINATION REGULATIONS

(Made by Order in Council P.C. 1960-1792, dated 31st December, 1960.
SOR/61-16, Canada Gazette, Part II, 25th January, 1961)

1. These Regulations may be cited as the Canadian Bill of Rights Examination Regulations.

2. In these Regulations, "Minister" means the Minister of Justice.

Examination of Bills

3. In the case of every Bill introduced in or presented to the House of Commons the Minister shall, forthwith upon receipt of two copies of the Bill from the Clerk of the House of Commons,

- (a) examine the Bill in order to determine whether any of the provisions thereof are inconsistent with the purposes and provisions of the Canadian Bill of Rights; and
- (b) cause to be affixed to each of the copies thereof so received from the Clerk of the House of Commons a certificate, in a form approved by the Minister and signed by the Deputy Minister of Justice, stating that the Bill has been examined as required by the Canadian Bill of Rights;

and one each of the copies thereof so certified shall thereupon be transmitted to the Clerk of the House of Commons and the Clerk of the Privy Council.

Examination of Proposed Regulations

4. A copy of every proposed regulation submitted in draft form to the Clerk of the Privy Council pursuant to the Regulations Act shall, before the making of the proposed regulation, be transmitted to the Deputy Minister of Justice by the Clerk of the Privy Council.

5. Forthwith upon receipt of a copy of proposed regulation transmitted by the Clerk of the Privy Council pursuant to section 4, the Minister shall

- (a) examine the proposed regulation in order to determine whether any of the provisions thereof are inconsistent with the purposes and provisions of the Canadian Bill of Rights; and

- (b) cause to be affixed to the copy thereof so transmitted by the Clerk of the Privy Council a certificate, in a form approved by the Minister and signed by the Deputy Minister of Justice, stating that the proposed regulation has been examined as required by the Canadian Bill of Rights;

and the copy so certified shall thereupon be transmitted to the Clerk of the Privy Council.

Report of Minister

6. Where any of the provisions of any Bill examined by the Minister pursuant to section 3 or any of the provisions of any proposed regulation examined by him pursuant to section 5 are ascertained by the Minister to be inconsistent with the purposes and provisions of the Canadian Bill of Rights, the Minister shall make a report in writing of the inconsistency and shall cause such report to be deposited with the Clerk of the House of Commons in accordance with Standing Order 40 of the House of Commons at the earliest convenient opportunity.

7. A copy of every report made by the Minister pursuant to section 6 shall, where such report relates to a proposed regulation, be transmitted to the Clerk of the Privy Council forthwith upon the making thereof.

HOUSE OF COMMONS

Fourth Session—Twenty-fourth Parliament

1960-61

SPECIAL COMMITTEE ON
THE WAR MEASURES ACT

Chairman: G. W. BALDWIN, Esq.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 2

WEDNESDAY, JUNE 28, 1961

THE WAR MEASURES ACT

WITNESSES:

Mr. R. B. Bryce, Clerk of the Privy Council and Secretary to the Cabinet;
Mr. E. A. Driedger, Deputy Minister—Justice Department; Mr. R.
B. Curry, Director—Emergency Measures Organization.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

SPECIAL COMMITTEE ON THE WAR MEASURES ACT

Chairman: G. W. Baldwin, Esq.,

Vice-Chairman: A. DeB. McPhillips, Esq.

and Messrs.

Aiken

Deschatelets

Fortin

Kucherepa

LaMarsh (Miss)

Mandziuk

Martin (*Essex East*)

Matheson

Paul

Pitman

Roberge

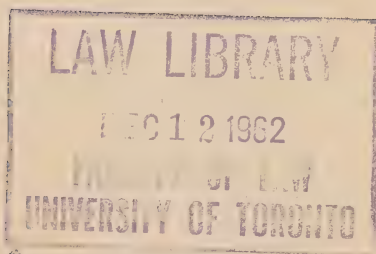
Spencer

Stewart—15.

(Quorum—8)

R. L. Boivin,

Clerk of the Committee.



Queen's Printer

MINUTES OF PROCEEDINGS

WEDNESDAY, June 28, 1961.

(4)

The Special Committee on the War Measures Act met this day at 2.45 o'clock p.m. The Chairman, Mr. G. W. Baldwin, presided.

Members present: Miss LaMarsh, and Messrs. Baldwin, Deschatelets, Fortin, Kucherepa, Mandziuk, Matheson, McPhillips, Roberge.—(9).

In attendance: Mr. R. B. Bryce, Clerk of the Privy Council and Secretary to the Cabinet; Mr. E. A. Driedger, Deputy Minister of Justice; Mr. R. B. Curry, Director of the Emergency Measures Organization.

The Chairman introduced Mr. R. B. Bryce, Clerk of the Privy Council, and invited him to make a statement.

Mr. Bryce explained to the Committee the effects that a nuclear war would have on the function of government and outlined some measures that the Emergency Measures Organization could take in this respect. He also reviewed the powers conferred on the Federal Government by the War Measures Act.

The witnesses were questioned at length on these matters.

The Chairman indicated that he would call a meeting of the Subcommittee on Agenda and Procedure to consider the future course of the Committee.

At 3.50 o'clock p.m. on motion of Mr. Kucherepa the Committee adjourned to the call of the Chair.

R. L. Boivin,
Clerk of the Committee.

EVIDENCE

WEDNESDAY, June 28, 1961.

The CHAIRMAN: Miss LaMarsh and gentlemen, I now see a quorum so we can proceed.

Today we have with us Mr. R. B. Bryce who is, as you know, clerk of the Privy Council. The Privy Council has a very considerable responsibility in connection with emergency measure regulations, and while not directly concerned with the administration of the War Measures Act, they are, of course, vitally interested in its application and any changes in it.

With Mr. Bryce is Mr. R. B. Curry, who is also concerned with the administration of the emergency measures organization.

According to the program arranged at our last meeting, Mr. Bryce is going to make a statement, subject to being questioned at a later time. I think Mr. Curry also will be available for questioning, if the committee so desires.

Mr. R. B. BRYCE (*Clerk of the Privy Council and Secretary to the Cabinet*): Thank you, Mr. Chairman.

I should start out by saying that I will try to keep my statement brief, and I will leave the direction of the committee's interests to lead where they wish me to go.

My remarks do not bear directly on the provisions of the draft bill that is before the committee as a result of its last meeting. What I shall say is intended, rather for background information, and I would draw from my remarks a couple of suggestions that the committee may consider worthy of attention in regard to the legislation bearing on war measures. This I put forward purely as my own, although I do say with the Prime Minister's knowledge and consent.

First, I should say that various parts of the government organization are now preparing intensively on war measures which would be necessary if a nuclear war occurs. These preparations might be described as of four kinds: First, the assessment of the situation and problems that we might expect to face. Secondly, a consideration of the policies, actions and legal measures that may be needed—and these, of course, are what bear most directly on the work of this committee. Thirdly, the preparation of the framework and organization that would be necessary in dealing with the war situation—civil and military, federal, provincial and local, both central and decentralized, and with the selection of people to man such an organization. Fourthly, we are going ahead with the creation of some of the physical facilities which will be required for carrying on government in war, including particularly emergency communications networks, which are of peculiar importance in our case because our own regular communications networks are very vulnerable to the destruction of a few key points; and finally, a certain amount of radiation-resistant accommodation from which we could carry on operations in the presence of nuclear fallout.

This work is going ahead on a number of fronts, both in Ottawa and elsewhere. I might mention a few of these. First of all, in the Privy Council office we now have an organization of about 70 people, which we call E.M.O.—Emergency Measures Organization, which is engaged full-time on this work. Our hope is that this staff will increase to about 99, if parliament approves the estimates that are before it for this year. The army is doing a lot of work

now on their relations with these civil measures, and they have a considerable role now in regard to warning and the rescue of people who are in damaged areas, and in regard to the whole re-entry into severely damaged areas, as well as the control of them.

Other departments also are working on it; some people part time, and some full time. I might mention the Department of Defence Production. This department has a fairly good-sized organization preparing work in the field of supplies, prices, rationing and various measures necessary on the supply side. The Department of Transport is working on communications and transport problems. In addition, the provinces, now assisted by the financial assistance program which parliament has authorized, are themselves not working simply in the field of civil defence, but also in a field more akin to what we call emergency measures generally, because they know there will be problems for them in carrying on their essential governmental operations during war-time. Many municipalities, as well, are doing this; not uniformly, and not all of them, but mainly on the aspects that used to be described as civil defence. However, they appreciate that such things as public health measures and that sort of thing, will have to be carried on under war conditions that are quite unusual.

In assessing the situation that we are apt to face from the point of view of this committee and the legislation that is necessary, I would like to stress perhaps half a dozen points. First of all, we are now having to make our preparations in the expectation that this time the war would be in Canada. Primarily it will not be a matter of carrying on a war overseas or at sea. We anticipate that North America would be the main target of nuclear attack and, therefore, we must be prepared to deal with war in North America.

Secondly, we cannot anticipate with any confidence what the nature or scale of the attack on Canada is apt to be, nor its physical consequences. No one has really undergone nuclear war previously. Of course, there were the two bombs dropped on Japan at the end of the last war, but they were so different in scale to what we must expect now, that they are very little guide. We do not know with great accuracy what the capabilities of a potential aggressor are. We cannot guess very accurately what his intentions would be, how much destruction he would really want to cause, how much he would feel would accomplish his war aims, how far he would give priority to targets in Canada, or how far he would give targets in Canada as a second choice to his forces should they not be able to strike other targets.

Also we cannot foretell with accuracy what we must expect as the result of misses, missed shots, and in the case of manned aircraft carrying nuclear weapons what explosions we have to anticipate should the aircraft be shot down. In the case of missiles, we do not know what we must expect from missiles that do not reach their targets, that fall short or go astray in one way or another.

It is clear we would be very severely damaged, and could be practically obliterated, but actually how much would happen we cannot tell in advance. Therefore we feel we have to make our preparations on as flexible a basis as we can, and be prepared to adapt them at the time to whatever comes about.

At all events, we know that in both scale and damage, and in the presence of radioactive fallout, which is a new phenomenon, we shall face quite unusual problems in nature as well as scale. We cannot really tell how far we shall be able to carry on rescue operations, maintain communications and things like that.

As a result, it is essential to try as best we can to picture the circumstances and prepare for them, but we feel it is necessary to have a minimum of organization that can deal at short notice with the problems, an organization that has sufficiently wide authority to take what actions appear neces-

sary on short notice and in rather desperate circumstances. At all events we picture the situation as being one completely unprecedented in its severity and seriousness.

A third aspect which I think we should draw your attention is that war may start—and indeed many of us think this is likely—very suddenly, and at maximum intensity. You are all aware that, so far as manned aircraft are concerned the most we can hope for is two or three hours warning from the various lines. Whether we shall get what is called strategic warning is a matter in dispute. If the potential aggressor massed troops to cross frontiers, if he massed his aircraft on airfields in a way that attracted our attention it would facilitate his own initiation of operations but it would warn us. Surprise is of tremendous value in these circumstances, we are told, and he may well give up other advantages in order to conceal his intentions to the very last moment.

Consequently, we cannot be sure of more than a few hours of warning. Indeed, when missiles become the main element of the threat, it may well be that 15 or 20 minutes warning is all we can anticipate. Obviously that does not permit us even to move to any degree, although we must, of course, recognize that all places will not be hit in the first wave of attack, and consequently, once the first strikes occur, a great many people in this country may decide to move, whether we suggest to them that they should do so or not. Therefore, we must be prepared for movement even though the time for the first strikes are very short.

If war starts deliberately, then we must anticipate it will start very suddenly. It could, of course, grow out of a tense situation—an international crisis, for example, such as might be expected over Berlin. In that event, one might visualize a period in which we could have some expectation of war. We will be faced then however with a very great difficulty as to whether we should use that tense period in order to take any overt action, because it may well be that at that time governments would judge that it would only increase the danger of the situation to take action that suggests that we feel war is now imminent. This is the sort of action both sides might take, and you simply escalate up to making it more inevitable.

Miss LAMARSH: You mean defensive action?

Mr. BRYCE: That is right. The taking of defensive action may suggest to the other party concerned that you are about to take other action, especially if the defensive action is of fairly drastic character.

Moreover, once the government began to take obviously important defensive action, it is apt to make the public feel that it is time for them to do so. You may then get all sorts of panic and trouble, mass evacuation, and so on, which may be a sensible reaction but the consequences of which you would have to calculate. Therefore, you would not undertake it very easily.

This is the kind of consideration we have to have in mind in reckoning how the matter is going to start. As a consequence, we have to recognize that when it is decided war has come, that the public must be told and that overt action must be taken, we may have only a matter of minutes in which to act. This, of course, has some bearing upon the legislation and how the legislation is brought into effect.

Another point, I think, which should be mentioned is the danger of disorganization. This is one that has given us a good deal of concern. As I mentioned a moment or two ago, our communications in this country are quite vulnerable. We have a number of potential target cities in which a large part of our governmental mechanism is situated. A large part of our communications goes through them. If these targets are hit at an early stage, there is a great danger of panic, of lack of communication, lack of government, and of the situation getting very chaotic and disorganized. We are most anxious to try

to avoid this, so that there will be some guidance and leadership for people, in so far as one can do anything at all.

Finally, I think we must recognize that part of the problem is that many people—perhaps most people—will not be ready for the situation, no matter what we tell them. As members of the committee well know, the government has been suggesting to people that they should have some kind of fallout shelters in their homes, or yards. It is obvious that most people have not yet decided to do this. In so far as they have not done it and the war does start, a great many of them will undoubtedly be terribly worried about what is going to happen to them in the presence of nuclear fallout.

Miss LAMARSH: Do you have one, yourself?

Mr. BRYCE: Yes, I do.

Miss LAMARSH: Congratulations!

Mr. BRYCE: I am one of the exceptions.

Consequently, our problem is bound to be complicated by the fact that many people simply will not be ready for the situation. So much then for our appreciation of the situation that is apt to arise.

Now, as to the types of war orders and regulations which may be needed. We are now working on this quite extensively with the various departments concerned, particularly in the light of the exercise that we had last month. This showed us some of the problems that we were going to have in these orders, in getting them passed, putting them into effect, and so on. We are now in the course of a rather intensive review of what is needed and how these various war orders and regulations ought to be revised.

I will not try to go over all the kinds of orders. Broadly speaking, I can identify a number of the things that are needed, some of which have been already prepared. For example, we will need to establish the various authorities required to carry out the emergency control operations that will be necessary. As the Prime Minister has announced, we intend to set up a war supplies agency that will deal with economic problems, supplies, prices, rationing, and things of that sort. Draft orders have been prepared to establish such an agency. They are now being revised in the light of the experience of that exercise. Similarly, orders necessary to set up agencies to deal with communications, with transport in several forms, with manpower, with internal security and protection, and a variety of orders to create organizations, are being prepared. Secondly, there will be orders necessary to give the government, or various agencies of the government, power to secure supplies, facilities, and so on, as well as requisition accommodation. It may be necessary in these circumstances to billet people, which will be quite an unusual experience for Canada; but if we have a whole lot of homeless people coming from target areas that have been hit or we fear be hit, it will obviously be necessary to accommodate them in what housing accommodation is available.

Miss LAMARSH: To go back to 1812.

Mr. BRYCE: Yes. We will also have to appoint various key personnel such, for example, as regional commissioners, who would be in a position to exercise federal authority in various regions if communication with the Ottawa area breaks down. We envisage having to put in regulations to control broadcasting; coastal illumination, so that submarines cannot make out too readily just where they are in relation to the shore; for censorship, which of course we have in time of war but not in time of peace; and for a variety of things like that. Finally, it may be necessary to have orders in due course to control the movement of the public, if they are moving about and one has to keep them out of some areas and confine them to others for their own safety.

This is just an indication, Mr. Chairman, of the variety of the orders which will be required.

We have got out from the library the volumes of the orders passed during the last war. I would not suggest that these are any indication of the volume of orders which would be required early in another war; because a great many of these accumulated from year to year and are revisions and amendments and changes of one kind or another. However, these volumes illustrate that eventually we need to get into a tremendous amount of detail.

We would hope that we would have enough orders ready, when a war does break out, to have a framework of organization and authority necessary to do what is required in the first few days; and that we will get time, after the first few weeks, to figure out what has to be done and what ought to be done over the longer term.

Our big problem now, as we envisage it, is somehow to get through the first month, and then we hope to be in a position to work our way through the rest.

What does this add up to in regard to legislation? I would suggest two possible items which have a bearing upon the War Measures Act, although they do not necessarily involve changes in it. One of them is to consider a method of bringing the War Measures Act into effect without requiring proclamation. The proclamation can be a relatively quick process. We tried out, in this exercise which we had in May, how long it took us to get the War Measures Act proclaimed in a legal way; and, from the time the Prime Minister received warning from the chiefs of staff, until we had the proclamation sealed by the great seal, it took us 23 or 24 minutes, or something of that kind. That does not seem very long. Of course, I knew this was coming, and had everything ready and it went relatively smoothly, but if it came unexpectedly I am sure it would not be possible to get that done so quickly.

Secondly, even 23 minutes in modern conditions is a delay which may be quite serious, because it means that we have to hold the government in one place long enough to take action after the proclamation is made. I would think that, in the kind of circumstances which we envisage, we would want to disperse the government as well as dispersing parliament, so that it does not present an attractive target to a potential enemy. It is this principle of dispersal which may be the only way we can avoid having the main group of our key people, as far as authority in the country is concerned, destroyed at one blow.

Consequently, this question of how to bring the act into force has some almost mechanical importance.

In the War Measures Act as it existed in 1939, there is of course provision for a proclamation declaring that a state of actual war or apprehended war exists, but in fact orders were issued under the War Measures Act a few days before that proclamation was issued on September 1, 1939.

That is not possible with the War Measures Act as it is now. I think it would be feasible, by several means, to have it come into effect in advance of a proclamation—perhaps, for example, on the basis of a nuclear detonation occurring in Canada, which is reasonably observable evidence that would bring it into effect. Again, perhaps it could come in automatically on the issue of a public warning by the Prime Minister or by an appropriate minister, that an attack is expected. This is one thing, of course, we will have to do by every effort at our disposal, and it may well be that something of the sort could be used to trigger the operation of the War Measures Act.

Miss LAMARSH: At this juncture you might tell us what they do in the U.K. and the United States to start the mechanical operation.

Mr. BRYCE: I should be able to answer that question, but I cannot. May I leave that and see if Mr. Curry knows the answer. He may.

The second point I would raise is this. Under the Interpretation Act, we can pass regulations before a statute comes into effect, so that when we proclaim the statute we bring it into full force and effect with the various regula-

tions which are necessary to make it work. That does not apply to the War Measures Act, because of the specific wording of section 12 of the Interpretation Act, which envisages only an act as a whole coming into effect—whereas in the case of the War Measures Act it is just certain key clauses that have effect when a state of war exists or is apprehended.

It would be helpful to us if that provision in the Interpretation Act were wider, or if there were some equivalent power which enabled us to get our war measures ready in advance, in peacetime, so that when the War Measures Act, or the key clauses of the War Measures Act, come into effect, then these various measures themselves would have effect. Then it would not be necessary for the government to meet for the time which would be required to pass these various measures, in the middle of the crisis itself that we envisage as arising immediately on the outbreak of war.

Those are the two things, Mr. Chairman. Neither one involves any new principle. We already have the second one in the Interpretation Act, but simply not in quite wide enough form to meet our requirements. As far as the first question is concerned, having the War Measures Act come into effect more or less automatically, as a result of the situation rather than the proclamation, that was the situation in practice earlier and therefore it does not involve a new principle. I think, Mr. Chairman, those are the main things that I have to say at the beginning, and that I would be happy to answer questions arising out of them.

THE CHAIRMAN: Thank you very much, Mr. Bryce; this has been very interesting.

MISS LAMARSH: I read an article in *Saturday Night* a couple of weeks ago, which has been giving me some cause to worry. I am not a constitutional lawyer, but I wonder what the situation is respecting the status of war when the War Measures Act applies, as opposed to the British North America Act and the separation of powers between the federal and provincial governments. In this article I noticed that the Saskatchewan government refused to participate in the talks in 1961. I wonder how you can set out a federal scheme if you already have one of the ten provincial powers saying that it will not play ball. How is the federal obligation to citizens of that province to be looked after in such a case? With respect to powers which have been passed and which are immutably in the hands of the provinces, is your planning going to stop at the border, when a province says no? And further, are you going to stop at the border of a municipality? How, constitutionally, can you get over this, or will you just say: well, in a war emergency we will worry about the constitutionality later.

MR. BRYCE: That is a question which has been giving us some concern organizationally from the beginning. As far as constitutional powers are concerned, Mr. Drieder would be a much more expert witness than myself; but speaking as a lay type of witness, I would say that in my experience the federal government and parliament have never had any real trouble in wartime in securing whatever jurisdiction and recognition of jurisdiction was necessary to carry out war measures. I think that the courts have generally held that the opening words of section 91 of the British North America Act are broad enough to cover whatever emergency action is required. I just do not know why it is that peace, order and good government seem to confer emergency power, in war.

MISS LAMARSH: It does not say war.

MR. BRYCE: That would be my answer, speaking as a layman, to your jurisdictional question. But as regards the practical problem,—and we look upon it as essentially a practical problem,—we think that action by all levels of government will really be required if we are going to meet the terrible emergency of nuclear war effectively. We do not want to have to set up an organization to carry out the sort of functions that provinces and municipal-

ities have organizations to do in peace time, and can do effectively under war conditions. I am thinking of public health measures, for example, the administration of hospitals, and a variety of things of that sort. We have felt that as a practical approach to meet the problem it was best to get some agreed sharing of responsibility with the provincial authorities in particular, so that we could all get at it as well as possible. I must say that the provincial governments have shared that view and have agreed that there should be a recognized division of responsibility. The Prime Minister has made reference to this matter in the house. I have his various statements here. I think it is fair to say that all the provinces have concurred pretty well in this distribution.

Mr. R. B. CURRY (*Director, Emergency Measures Organization*): Yes, I think you can say that; and in the article which Miss LaMarsh has referred to, when she said that the Saskatchewan government would not participate in the exercises, I think it requires a little explanation. The ministers of the Saskatchewan government did not happen to take part in those exercises, but the public service representatives did do so.

Miss LAMARSH: There was cooperation with the Saskatchewan government?

Mr. CURRY: Yes, through the public service, surely.

Miss LAMARSH: Because this is an area in which there was quite a bit of division of public feeling, with some people feeling that all these emergency measures should have been primarily under the planning of provincial governments, while others have said it was a waste of time and money; and it is conceivable that other levels of government might say: we have had enough and we will not spend any more money. Let us suppose that this period of intensive planning should continue for ten years. Surely all your plans would fall to nothing then, and you could not get the cooperation of the people through their elected representatives.

Mr. BRYCE: These functions, which the federal government will endeavour to carry out, and the allocation of which to the federal authorities has been pretty well agreed upon as between ourselves and the provinces, will be going forward regardless of what view the provincial governments may take. The provincial governments may not make preparations in their own fields, but they would not prevent the army from carrying out their warning functions in a particular province, and they would not prevent our getting a war supplies agency established in such a province. Some fields, for example, the health field and the welfare field, looking after refugees and that sort of thing, would likely be provincial matters. So far we have made no preparations on the federal side to step in where a province has been falling behind or is unwilling or indisposed to take action. We have felt that by and large we were getting a degree of support from the provinces, and that it would be wrong to step in to fill any sort of vacuum. All ten provinces are participating in our financial assistance programs and are doing various things in the field in one degree or another. Certainly some are much ahead of others; but they are working under their own authority, and we have felt it was better to persuade them than to try to substitute for them.

Mr. MATHESON: In listening to Mr. Bryce, it seems to me we have a number of different problems; one is that of providing the legal and perhaps constitutional framework whereby something can be done. Behind that, however, there is the very real problem of having an organization which is able to function in a realistic and practical way, notwithstanding the fact that over a projected period public interest may wane in its realization of the danger of the situation. I wonder if the government could take cognizance of the enormous strategic value to Canada of the St. John Ambulance in this situation. We know that the Prime Minister, the Leader of the Opposition, and probably nearly every member of parliament, in some way or other, is involved in the

St. John movement. In Ontario, we have people like Ian M. MacLaren, Brigadier I. H. Cumberland, General Sir Neil Ritchie, Lt. Col. I. M. R. Sinclair, Brigadier Eric Snow, and Commissioner Leonard Nicholson who are actively involved in our own Ontario headquarters.

It seems to me that the St. John Ambulance becomes the refuge for great soldiers after they have served militarily. They then fit into this great area of work which can be described as public welfare. In the welfare branch and the security branch, I believe, I have noticed the St. John movement works its way in there. To what extent is the government prepared to use a great organization like this, which has highly competent and qualified staff personnel—these people who were officers of high rank but who are now basically interested in welfare. They would be able to fit in if there should be some enormously important national emergency under the emergency measures organization. It seems that the St. John Ambulance is one thing which could provide cohesiveness, teamwork and great leadership, even though it is disguised to some extent as a non-war organization.

The CHAIRMAN: Do you have any comment, Mr. Bryce?

Mr. BRYCE: I cannot say in detail how far the excellent organization to which the member refers is being effectively organized into the plans, because most of those plans concerned to date are essentially local and provincial rather than federal. As the army takes over more and more of the rescue work, I would think it will be confronted to a greater and greater degree with the necessity of making effective use of the cooperation of such organizations as the St. John Ambulance, as well as other local organizations. For example, I have heard that in many localities there are very effective Legion organizations which would be a useful connection, for those engaged in organizing to meet the emergency, to get a body of able, enthusiastic people.

Mr. MATHESON: We know that the St. John Ambulance is training emergency measures organization people at the municipal level in the cities, towns and villages; we know that they are organized on a provincial basis; we know, too, that they are some of the most competent strategically qualified people we have in Canada. If their views, on a high level, could be sought on some of these things, they probably would be of a great deal of assistance in guiding our service personnel.

Mr. BRYCE: I think Mr. Curry knows more about this than I do.

Mr. CURRY: I have been very interested in the comments of the member of the committee. Certainly the potential of the St. John Ambulance is very well known and most welcome. They have acted at the local level a great deal, and a great deal of training was carried on by the St. John Ambulance, as you know, in the former civil defence organization and in the new organization in all the provinces. Only recently this matter to which you refer was the subject of extensive conversation in my office with some of the senior persons in the organization. The possibilities of using their services and their experience even more fully was canvassed, especially in relation to the area Mr. Bryce referred to, the army's re-entry and rescue operations. The fact that this organization is in existence, has experience, and some very good people in it, is completely recognized.

Mr. DESCHATELETS: Mr. Chairman, I understand we have already at work an organization for emergency measures in case of war or nuclear war; but, in view of the fact that there would be strong possibilities of radioactive fallout, I would like to know if this organization has already planned construction of public shelters in the major cities of Canada and also if it is contemplated to provide to the public facilities to build their own shelters if they so wish?

Mr. BRYCE: Mr. Chairman, the government has not made any decision to build public shelters in the cities. It has recommended that individuals build

shelters in their own homes—and I am referring to the fallout shelters—which we feel is the most economical and sensible way to do it. It is much cheaper to provide shelters in a basement. We feel that it is not wise for the government to go in and build shelters in people's basements.

Mr. DESCHATELETS: I mean to provide the facilities, as we do for the construction of a house. I am referring to those who would like to build a shelter but have not the money to do so. It was my thought that if the government would provide loans in this connection it would prove very helpful to a large number of people.

Mr. BRYCE: They do this through the mortgage facilities of C.M.H.C. These authorize an additional \$500—I think that is the amount—for anyone building a new house and wanting to build a shelter into it at the same time. Also, the provisions of the home improvement loans part of the act are available to anyone who wants to borrow money in order to build a shelter in his existing house.

Mr. FORTIN: Mr. Chairman, our learned friend, Miss LaMarsh, has raised a very interesting question. I also am of the opinion that there is a conflict of jurisdiction between the federal and provincial governments in so far as this act applies. I do not think it is possible to apply this act entirely, unless there is a definite agreement between the provincial and federal governments; even more so, unless there is an amendment to the B.N.A. Act. For instance, you have here section 3(f)—

The CHAIRMAN: Are you referring to the War Measures Act?

Mr. FORTIN: Yes. The act here authorizes the governor in council to make orders and regulations for the appropriation, control, forfeiture and disposition of property and of the use thereof. Now, by virtue of the B.N.A. Act, the disposition of property comes under the exclusive jurisdiction of the provincial government. If, for instance, my property is forfeited in accordance with this act here, if I apply to a civil court, it will have to apply the B.N.A. Act and come to the conclusion that the federal government cannot forfeit my property, that it is under provincial jurisdiction.

The question I would like to ask is this: Is there a clear agreement between the ten provinces and the federal government concerning these particular points, where there may be a conflict of jurisdiction?

Mr. BRYCE: First may I say, sir, that I think the experience in the last war has shown that, in fact, the federal government and parliament does exercise jurisdiction over property for example, in wartime; and the legal basis of that has been recognized in the war of 1914 and the war of 1939-45. So, the legal basis of federal action under war conditions has been something different from the ordinary constitutional provisions.

Miss LAMARSH: It has been a sort of policy decision of the higher courts, then?

Mr. BRYCE: Well, if you want to get into the legal basis of it, it would be better to have Mr. Driedger speak to that.

Mr. DESCHATELETS: I said this morning, Mr. Chairman, that we already have jurisprudence. In 1948 the federal government asked the Supreme Court of Canada to decide if the federal government, in 1948—three years after the termination of war—had the right to legislate on rentals. Now, there is nothing more local nor provincial than rentals. The Supreme Court has recognized that even in 1948 the federal government had the right. If I remember correctly, we abandoned this in 1951. However, the jurisprudence is pretty clear in that in time of war they have this right.

The CHAIRMAN: Would the committee mind if Mr. Driedger elucidated on this jurisdiction and the legal aspects of it in regard to the experience in both wars?

Miss LAMARSH: If I may interrupt, Mr. Chairman, I am trying to figure out how this fits in under our discussion of the War Measures Act.

As I understand the emergency measures organization setup under the Privy Council—and I do not know what has set it up; it is an act, is it not? Anyway, there is something functioning. This organization is making most detailed preparations for a state of emergency. Then, I assume that all these preparations would come in force as orders passed under the War Measures Act.

Mr. BRYCE: Yes.

Miss LAMARSH: And at that time the emergency measures organization would be more or less regularized as the authority.

Mr. BRYCE: In peacetime we do not exercise legal authority, and we have not had to ask parliament to give us any act.

Miss LAMARSH: You are the planning branch of the Privy Council.

Mr. BRYCE: Yes, a planning and the coordinating branch. Some of the departments have certain legal authority now. For example, the National Defence Act provides authority to the Minister of National Defence to carry on civil defence activities, as well as other defence activities.

Miss LAMARSH: That is the point I am trying to reach. If it is contemplated at such time as the War Measures Act comes into force that the emergency measures organization as an entity is to come into force, the government of Canada really would be an octopus at that time, in essence; and because of the nature of the type of conflict that we have to contemplate, what we need to bury in Carp, or whatever it is, is the E.M.O. branch and not necessarily the cabinet, because what will be functioning will be E.M.O. and not the cabinet. If I am incorrect on this, I wish you would please tell me.

Mr. BRYCE: I should say first, we would visualize when a war does break out, utilizing—

Miss LAMARSH: I would caution you to please not keep saying “when it happens”.

Mr. BRYCE: I should say, should it happen.

Miss LAMARSH: I prefer “if”.

Mr. BRYCE: Should a war break out we would want to use the basic organization of the government. The main interest of the cabinet, the Prime Minister, and the key government people in the several departments whose operations would be essential would, of course, be the war problems, and we would hope that E.M.O. then would become simply absorbed into the regular structure of government.

Now, we would not keep all the departments functioning. They would be concentrated in the really essential ones. However, we do not think of this planning organization as being the people who are going to run the war. They would be assigned to the various operating agencies or departments that would do the real running of the war. Consequently, they are not the ones we want to bury at any particular place. On the burying you talk about, I did mention earlier that for safety sake we think it is essential to disperse and not concentrate the key people.

Miss LAMARSH: There is one other matter and this arises from a question I was asked at a Voice of Women meeting here in Ottawa. A very emotional woman posed the question to those of us on the panel, how much advance notice would be given to the executive arm of government over and above that given to the public generally? I had assumed the difference in time would only be the length of time it took to communicate notice directly to the people, but the questioner seemed to have some information, or to be of the opinion that

there would be no public warning until everyone who had to be buried was buried, so as not to shock the population and cause a panic.

Supposing the immediate form of danger was an alarm given to the government that a missile might be expected to land in Niagara Falls in 20 minutes, how soon might notice be communicated to Niagara Falls?

The CHAIRMAN: Before that is answered, could Mr. Driedger deal with the very important point raised by yourself, Mr. Deschatelets and Mr. Fortin? Then Mr. Bryce might come back to this question which may open up a whole new line of questioning.

Mr. E. A. DRIEDGER (*Deputy Minister of Justice*): I was going to say, as Mr. Deschatelets has said, the jurisprudence on this is quite clear. Immediately circumstances put the War Measures Act into operation it is quite clear parliament has jurisdiction, and can delegate to the governor in council jurisdiction, under the peace, order and good government clause of section 91 of the B.N.A., power to legislate on any of the matters that would normally fall within the jurisdiction of the provinces. That has been tested on a good many occasions. There was the Fort Frances case, which called for a decision of the judicial committee of the privy council in 1923, to which I referred in my remarks the other day. There was also the case Mr. Deschatelets quoted—the rent control reference by Mr. Deschatelets—which was a privy council decision based not on the War Measures Act but on a consequent act, the Emergency Transitional Powers Act. The Nowlan case was another instance where you had a decision of the judicial committee of the privy council.

The Nowlan case and the Fort Francis case dealt with price control and requisition of property. Then there was also reference to the act in 1943, largely on the question of delegation. But, as I say, I think the jurisprudence is quite clear, and under the peace, order and good government clause parliament may legislate with respect to matters that would normally fall within the jurisdiction of the provinces. There is no constitutional problem in that field.

Miss LAMARSH: Except for the fact you might get a cabinet that will not play. There is not much you can do about that?

Mr. DRIEDGER: I do not know anything in that field, Miss LaMarsh.

Miss LAMARSH: It is quite clear, no matter what jurisprudence says, in considering the fineness of time involved.

Mr. DRIEDGER: I am not prepared to deal with that aspect of it. I was just dealing with the judicial question.

The CHAIRMAN: Are there any more questions on this particular question of jurisdiction before we leave it? If not, Mr. Bryce, would you deal with the question raised by Miss LaMarsh?

Mr. BRYCE: I should be glad to, Mr. Chairman. So far as our preparations and plans are concerned, they involve warning the public just as soon as we are confident that we are not going to create a false alarm. For example, I would anticipate that as soon as we know bombers have crossed the DEW line, when we can detect them with any confidence, we would get a warning out immediately.

Miss LAMARSH: But if they were missiles you might wait for Niagara Falls to go up in steam before you were sure?

Mr. BRYCE: If it were a missile; but we would want to be sure it was not the moon.

Miss LAMARSH: Nor the cow jumping over it.

Mr. BRYCE: As I say, our plans involve giving the public whatever warning can be given to them. Frankly, I have no confidence that if we started warning some select group the news would not leak around in moments. My own view is that we ought to warn the public just as soon as we are at all confident.

I should say we have arrangements made by which an advance party would begin preparations where there is the slightest suspicion; but by its nature such an advance party does not include the key people, because the dispersal of the key people would disrupt our regular consideration of things, and their movement would indicate the government had come to the decision that there was a problem.

It is going to be a terrible decision to make, that the public should be told war is imminent, because you may give rise to panic and all sorts of actions as a consequence, including destruction of property and even loss of life. One would not make this decision lightly; as soon as the decision is made and announced, it will go around the world in 60 seconds.

Miss LAMARSH: That is pre-supposing the members of the press gallery stay to report it?

Mr. BRYCE: As you can imagine, it will be picked up by every broadcasting station right away. You do not make an announcement of that kind lightly, and I think it would be wrong and really imprudent to attempt to answer that question now.

Miss LAMARSH: Then the whole planning of E.M.O. is predicated upon the fact that the war in which we may be involved would affect the whole of Canada?

Mr. BRYCE: Yes. In so far as it is necessary to undertake a limited war, such as the Korean war, we would expect to be able to take that in our stride, if we are ready for the more difficult operations.

The CHAIRMAN: Are there any more questions which can be directed to Mr. Bryce or Mr. Curry?

Miss LAMARSH: I have about a million of them, but I do not know if they concern these witnesses.

The CHAIRMAN: Mr. Bryce is in the same position as Mr. Driedger, that when we resume, whether now or subsequent to any adjournment, he will be available to come back and be of assistance to the committee in connection with this problem. I think the idea in his coming here was to give him an opportunity to present his views on what the problem was, in the understanding of the E.M.O. people. If not, I would suggest that we might well adjourn at this time. I am going to ask that there be a steering committee meeting some time tomorrow so that we can consider at that meeting how we will proceed.

There is one more question before we adjourn. A question has been raised about what plans are in effect in the United States and in the United Kingdom. I do not know whether Mr. Curry has that information or not. If not, I am prepared to arrange with the Clerk that he write and obtain that information, and possibly Mr. Curry would be of some assistance.

Mr. CURRY: Mr. Chairman, I think the question is of major importance and we would want to give you a completely first-rate answer. I would like notice of it. We could be helpful either in getting the information direct or in assisting the committee.

The CHAIRMAN: Mr. Curry is in a better position to obtain direct information from the people who are making the decisions and make it available to the committee at some later date. Is that agreed?

Agreed.

Could we have a motion to adjourn?

Mr. KUCHEREPA: I so move.

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